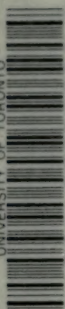
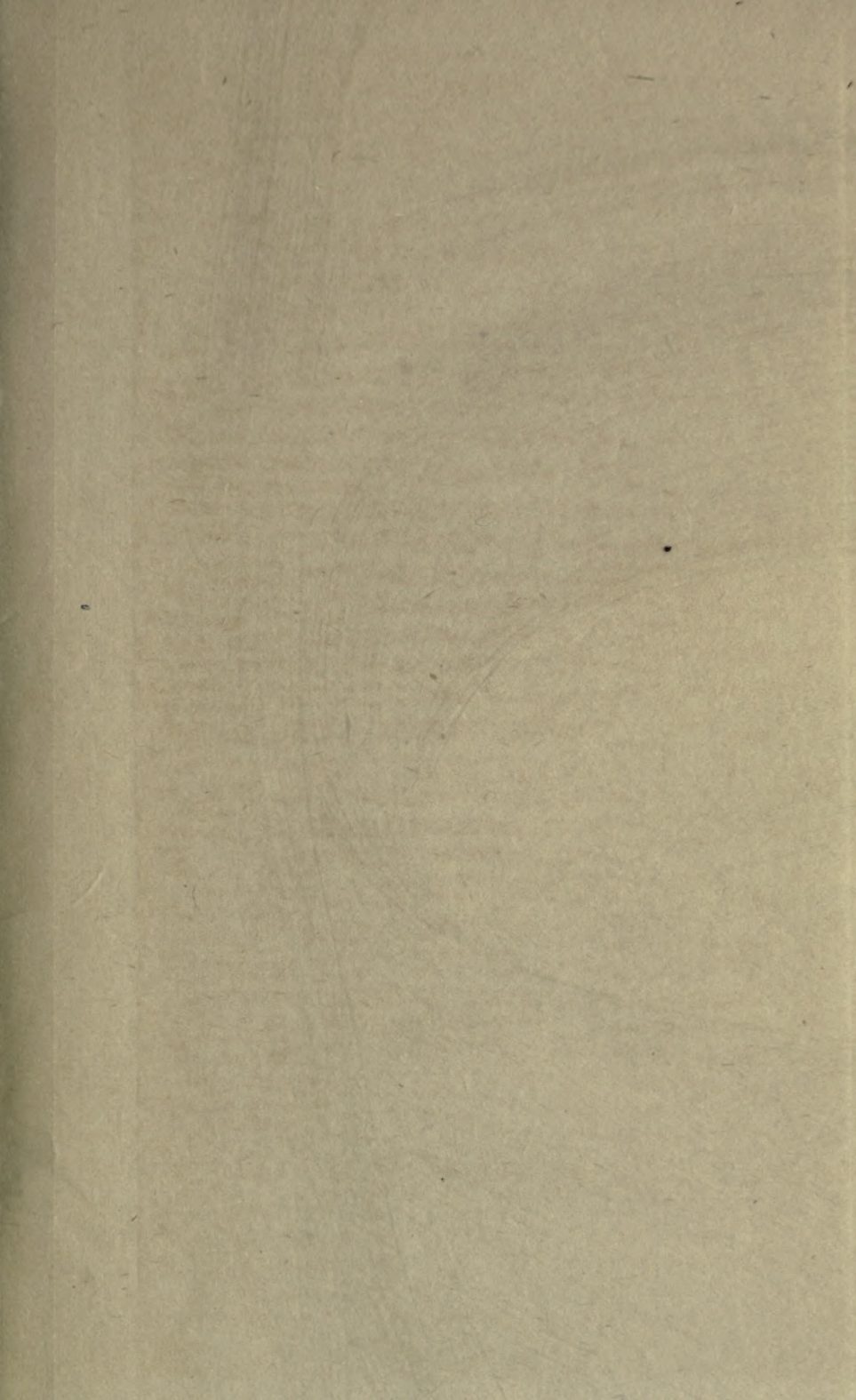



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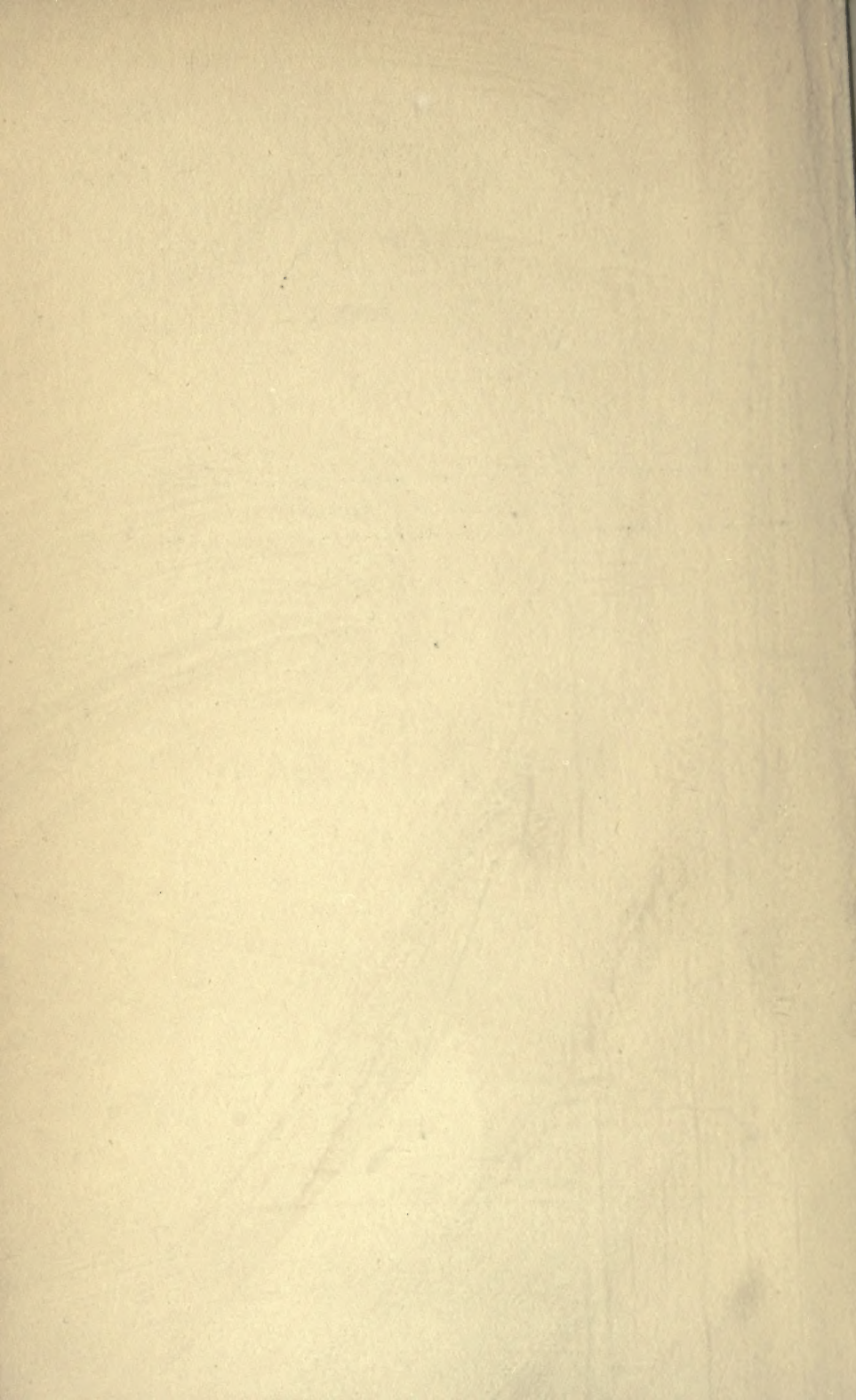






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The Law of the Kinsmen



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THE LAW OF THE KINSMEN

BY
LORD SHAW OF DUNFERMLINE.

WITH A FOREWORD BY
THE HONOURABLE
EX-PRESIDENT WILLIAM HOWARD TAFT,
D.C.L., Etc. Etc.
CHIEF JUSTICE OF THE UNITED STATES.

184578.

12.10.23.

HODDER AND STOUGHTON
LIMITED LONDON



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Mr. Taft's Foreword

LORD SHAW of Dunfermline is a real Democrat who loves his kind. This is manifest to those who have had the privilege of reading his autobiography in his *Letters to Isabel*. Its literary charm equals the interest of its disclosure of the intellectual force and bent of the writer. Lord Shaw seeks an epistolary familiarity with those whom he would reach. It brings him close to them, and them close to him, and fixes attention. It makes natural and easy his flashes of humour, and his good stories fit in most aptly. He joins in the laughs and jibes at the Scotch, though they never come off second best at the end. This little volume, descriptive of Lord Shaw's visit to the United States and Canada as a guest of the American and Canadian Bar Associations, he also puts into the form of letters to the two Presidents of his hosts, and they are an admirable vehicle.

Against all sorts of odds, Lord Shaw achieved an enviable eminence in his profession, became a most useful member of Parliament, a law officer of the Crown, and is now a leading member of the highest Court of the Realm and of the highest Court of the Empire. He loves that kind of Democracy that spells equality of opportunity. He has no weak tendency toward the abolition

of personal responsibility. Nor does he squint toward any theory of statutory equality of condition. The lesson of everything he says in this volume is the utter impossibility of achieving equality of opportunity except in a reign of law and order. He would be the last to eliminate fair competition or emulation as essential to progress, but the competitors must play the game, and the rules of the game are law and justice and peace.

It was expected that when such a Democratic leader visited the United States and saw this land of unexampled equality of opportunity, he should manifest enthusiasm and pleasure in the wonderful results and should be able, in his beautiful tributes, to rejoice the hearts of a people whose chief weakness is not undue modesty or self-depreciation. It is quite evident that Lord Shaw, by his previous reading, by his trained judicial habit of inquiry and analysis of facts, was able to learn much, even in his rapid journey through the United States, of the conditions political, social and governmental which obtain here.

Lord Shaw's division of the country into three Americas is substantially true. It shows clearly how difficult it is to affirm what the public opinion of the American people is upon any issue of world politics. It shows how misleading the attitude of the Eastern newspapers upon foreign affairs may be in reflecting the views of all the American people until a long time after the issues

have arisen and have been brought home to the three Americas. The mere physical travel across the Continent made him appreciate the inevitable reluctance with which a self-confident, self-satisfied and successful people, engrossed in material progress, can be led to take an interest in matters from which they deem themselves safely isolated by the vast expanse of land and sea between them and any other nation.

Only within the last year or two are the farmers and business men of the Middle and far West being made to know, by the absence of the usual foreign factors in keeping up the prices of products they sell, the interest they should have in European conditions. This is not to say that the American people are a people of varied racial groups. They are not. In spite of the large influx of foreign born, and the distressing congestion of some of them in our large cities, the one thing that strikes a President or any one of national prominence who has to make a progress from one end of the country to the other, is the homogeneity of the crowds of people who greet him. The language, the appearance, the dress, the humour, the manners, the bearing are the same with only local variations that it takes an expert to detect. And in this homogeneity is the well-founded hope of the preservation of our nation and its institutions. It argues the continuity of that sound conserving public opinion upon which the stability of our Government rests.

Lord Shaw saw our defects clearly. He was made anxious by tendencies which if they grow stronger will injure our great experiment in the pure rule of the people. He is tactful. He did not make a frontal assault upon our failings. He made them apparent in kindly suggestion rather than by statement. The present lack of respect for law in this country could not and did not escape him. And the primary lesson he taught in all he said to us was the absolutely indispensable need of the enforcement and respect for law if liberty and justice and happiness are to prevail for the humblest of our people. He could not as a visitor go into the causes for the present disquieting symptoms. Every war is succeeded by a reaction in the returning soldiers from the personal restraint of military discipline, on the one hand, and by their undue estimate of physical force as a source of power and influence, on the other. Then in our people who did not go to war the wonderful sacrificial spirit and real religious fervour have been succeeded by a return to worldly and self-gratifying trivialities.

Moreover, we have a special promoting cause of lawlessness in our community. As an outgrowth of the reforming and religious enthusiasm engendered during the war, we enacted into constitution and statute the policy of prohibiting in the whole United States the manufacture, transportation, import and export of intoxicating beverages. In the colder and calmer state of the public mind, the reform is found to be at variance

with the habits of many of our people, especially in the large cities, and in the outset the law has become most difficult to enforce. Natives of continental Europe used to beer and wine as a part of their daily diet cannot be expected to sympathize with such a restraint. Hence evasions of the law by small home brews, individual wine presses, and little stills are frequent. The most distressing symptom, however, is the attitude of some well-to-do and intelligent people who protest against the justice and wisdom of the law, and who treat with levity its violations when such violations serve to furnish them the wines and liquors they wish to have for their own enjoyment. The difference between the fundamental law and the government enforcing it, on the one hand, and a group of such well-to-do men and women, usually an element of strength in enforcing law, on the other, is demoralizing. It enlarges the criminal classes by recruits led to join their ranks by the lax, apologetic and conniving attitude of respectable people toward this unlawful but lucrative trade.

With many others, I was opposed strongly to national prohibition for the reasons, first, because I had grave doubt whether it could be enforced and feared the resulting demoralization of all law, second, because I deprecated much the undue expansion of the Federal jurisdiction and disturbance of the wise balance between national and state powers in our system, and, third, because I feared that no matter how drastic the

law, the question would force itself as a constant issue in politics, diverting the public mind from important issues, and in the confusion preventing a well-considered elective decision of them. My fears have been realized only too fully. But it may be that we have no right to expect a success in the new policy at once. The saloon has been abolished. Spread of intoxication through easy access to liquor has been abolished, and this great good is shown and appreciated in the country districts and small towns. There is very little prospect of a change of the policy because this would need the vote of two-thirds of each House of Congress and the vote of the Legislatures of three-fourths of the States, and the opponents cannot muster even a majority in the Congress just elected. The Legislatures of thirty-six States out of the forty-eight must vote to repeal the 18th Amendment to the Constitution. This is simply impossible. There is nothing to be done, therefore, except to set ourselves to the serious task of enforcing the law and to cease protesting against its enactment and by such an attitude encouraging its violation.

What the outcome is going to be, friends of law and order cannot confidently predict. We can only hope that those intelligent and well-to-do in the community who do not sympathize with the law will see the disastrous end of their "primrose path of dalliance" and will bend their own tastes and predilections to their plain duty. In view of these conditions, one need not elaborate

the great benefit of Lord Shaw's addresses, in every one of which, by apt illustration and by beauty and eloquence of diction, he enforced the maintenance of equal law as indispensable to the welfare of every people.

The arrangement of the two Bar Associations by which Mr. John Davis, our late Ambassador to London, and Sir James Aikins, Lieutenant-Governor of Manitoba, took charge of Lord Shaw and "Isabel" and conducted them west across the United States, and east across the Canadian Dominion, was most fortunate. It ensured receptions everywhere worthy of the distinguished visitors and gave them, as companions and hosts, men who could satisfy the eager inquiries of Lord Shaw's trained and acquisitive mind.

Nothing could have been finer than the spirit of loving kinship which Lord Shaw breathed into all that he said to us. In every audience and community he found sturdy and successful sons of the Thistle who crowded to hear him and speak to him and who made him feel at home, and he spoke to us as one of the same family.

Of his chief address to the American Bar at San Francisco on the "Widening Range of Law" one may well say it shows a rare combination of clarity, eloquent force, pithy phrase, happiness of illustration, use of real learning as a hand-maid not as a show, and delightful charm of style and humour. He would strip the law and its enforcement of useless form and ancient useless trappings and make it the expression of simple justice.

He warns us that law must be progressive to meet new conditions.

He advances from the mutual rights and duties of individuals to those of social classes, and of racial groups in nations, to those of nations themselves. His love of peace and hatred of war stand out and the obligation of nations to prepare to resist the coming of war by treaty and peaceful settlement he dwells on with an emphasis properly intended to reach the American people. He praises the love of a people for Independence and deprecates their desire for Isolation, and warns against mistaking the one for the other. The one he felicitously calls a defiance of domination, the other a defiance of brotherhood.

Lord Shaw's address to the Canadian Bar Association is equally interesting and forceful. It was on "Law as the Link of Empire." Here he spoke in his own jurisdiction as an honoured and able member of the Judicial Committee of the Privy Council, the highest Court of the Empire. He arrayed in fascinating terms the marvellous scope and variety of the jurisdiction it wields. His description brings to mind again the great figure used by Daniel Webster to show the expanse of the British Empire. "A power which has dotted over the surface of the whole globe with her possessions and military posts, whose morning drumbeat, following the sun, and keeping company with the hours, circles the earth with one continuous and unbroken strain of the martial airs of England."

But Lord Shaw would deprecate the suggestion in these glowing words of military force as the basis for the permanence of the British Empire, as well he might. The self-governing dominions and colonies of British peoples are kept in the Empire by the love of Mother England and their pride of race and relationship. The bond is as light as air but as firm as steel. With respect to India and the Crown Colonies, Britain's military strength in them utterly fails to supply the reason for her continued control. The secret of her retention of them is in the genius of her sons for administering government for the benefit of the governed and especially for the maintenance among them of equal law and justice. She brought this to peoples theretofore wholly ignorant of judicial judgments not prompted by favouritism and discrimination. It was a revelation compelling the admiration and awe of the natives and reconciling them to British rule as a substitute for injustice and war between themselves. In this engine of imperial government, the Privy Council is the governor. The different kinds of law it administers, and administers well, to the satisfaction of the communities affected awaken wonder that the judges can know so much. They enforce Mohammedan law, and Buddhist law. They welcome into their Court an Indian god Vishnu, who sues in his own right to protect the property devoted to his worship. There has been some agitation in small professional circles in Canada against

the appeals to the Privy Council. Lord Shaw's address was admirably calculated to end such agitation without apparent attack upon it. The Privy Council is a most important link between the mother country and her daughters, and it would be very unwise to break it. The Privy Council has exercised the wisest discretion in its judgments. It has respected with scrupulous care the local law and customs and has successfully breathed in the atmosphere of the far-distant places of the controversy and imparted it to its judgments. The members of the Privy Council are, and must be, statesmen, as well as jurists of far-reaching knowledge.

Lord Shaw shows by his account of his trip his appreciation of the great future of the Canadians. Their undeveloped natural resources and their energy and resiliency as a people with the traits of their English and Scotch forbears naturally impressed him. Lord Shaw, bred in the Scotch law, a derivative of the Roman law, felt at home among French Canadians in Quebec, where the civil law prevails, while his intimate familiarity with the common law made him a brother of the English Canadian Bar. The desire of the Canadians for immigration Lord Shaw gives voice to. But there is no hurry. It will come. It is better that it come slowly and with selection than that it come too quickly with a congestion of undesirables.

Having fresh and deep in mind a grateful

appreciation of my own warm and fraternal reception by the Bar and Bench of England in June last, I was anxious that Lord Shaw should find himself a brother among the judges and lawyers on this side of the water. It is a pleasure to note in this volume that my hope was realized.

His visit was most useful in keeping strong the bond between British and American lawyers. They are not the only class among us who cherish the Mother-country as the source of the principles of their life-work, but they are the most influential. The coming of Lord Shaw and the spirit of love and fraternity in the law that shone through all he said to us were most helpful. We are grateful to him. Great English judges and lawyers have been here before him as guests of the Bar Associations, but none has been more successful than he in realizing the object of his visit.

We look forward with pleasure to a visit from Earl Birkenhead next August. And in 1924 we hope our two Bar Associations of America and Canada may hold our annual meetings in London, the fountain-head of the common law, and drink inspiration for progress from old Westminster Hall, the Inns of Court, the Royal Law Courts, and the home of Bacon, Mansfield and Blackstone. Such a visit will create a thousand enthusiastic missionaries to be distributed throughout the United States, to teach our everlasting debt to England for the common law and our institutions of civil liberty and to spread the message of good-will and kinship from our "Old Home."

Lord Shaw makes one or two witty references to the leadership of Scotchmen in English politics and on the English Bench and in other fields of activity in English life. He mentions that at one time the House of Lords or the Privy Council had sitting in it four Scotchmen, one Irishman and one Englishman. Everyone who is at all familiar with the personnel of the British Government knows of the presence of Scotchmen in its important places. It has been so since the two countries united. The native intellectual force, the discipline of poverty, the necessity for effort and thoroughness in securing an education, the trained sense of individual responsibility and the natural tenacity of purpose explain it. But that is not the whole explanation. An essential factor in making it possible is the fairness and broadmindedness of the Englishman, his willingness to play the game, and to give the prize to him who wins it under rules. The situation reflects highly on the English character. It shows a deep-seated common sense and absence of a jealousy only too frequent in other countries.

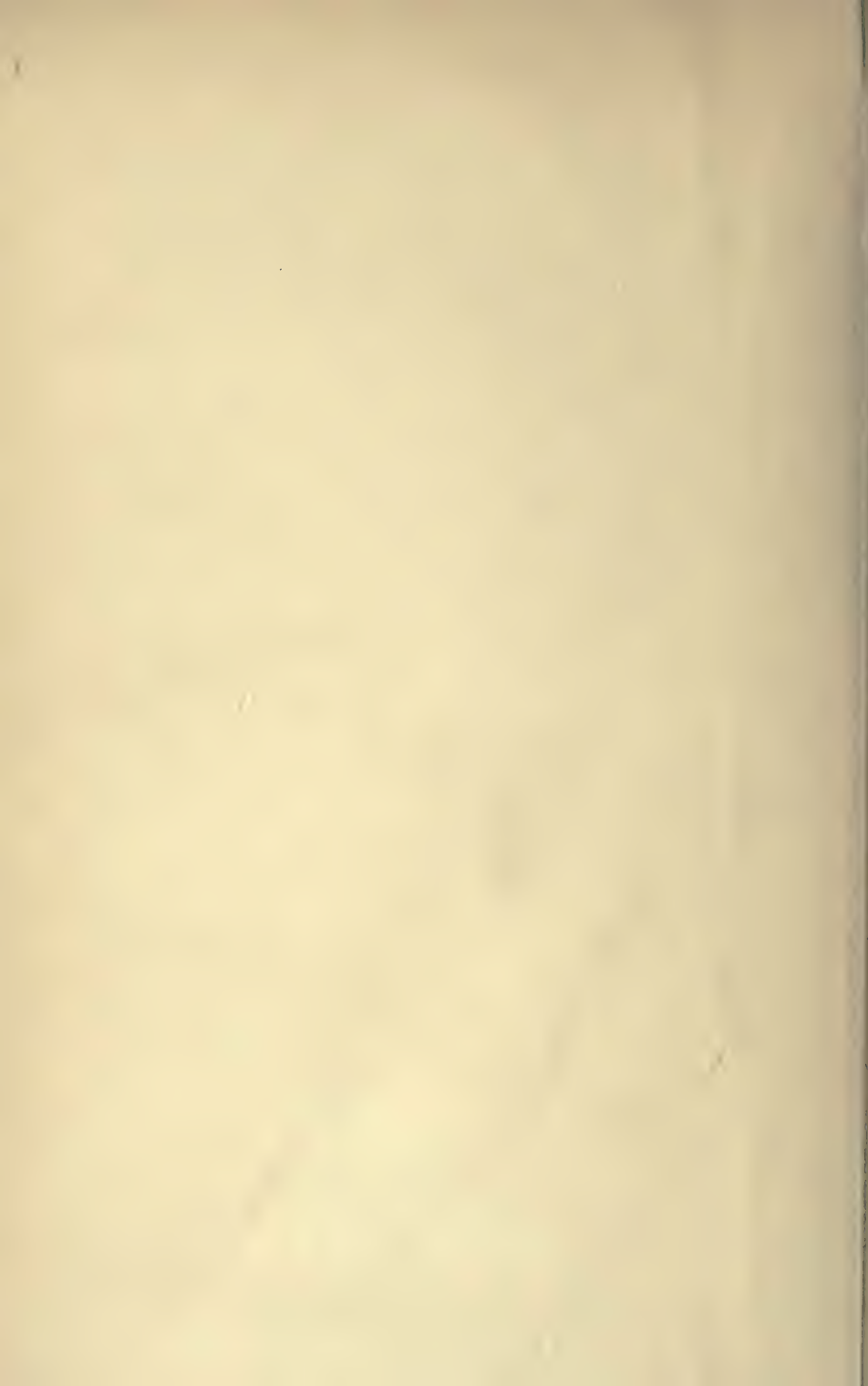
This book of Lord Shaw's, preserving in charming form the history of his trip, is a real contribution to the literature which binds our two countries together, and should be read by the people of both.

W. H. TAFT.

SUPREME COURT OF JUSTICE,
WASHINGTON.

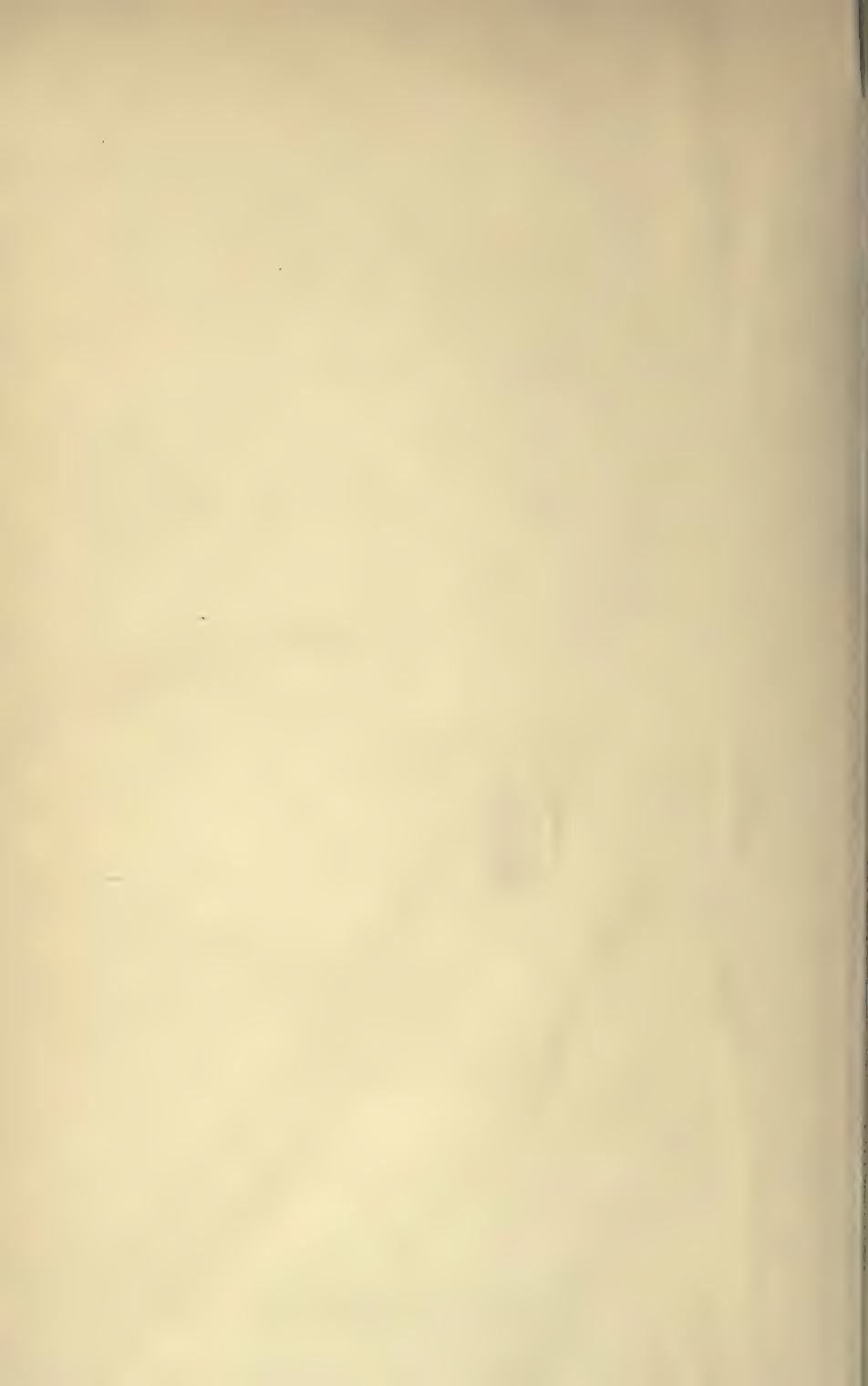
February 1923.

Dedication



TO
THE AMERICAN BAR ASSOCIATION
AND
THE CANADIAN BAR ASSOCIATION
IN ADMIRATION OF THEIR WORK,
AND IN REMEMBRANCE OF THEIR KINDNESS,
I RESPECTFULLY DEDICATE
THIS VOLUME.

9, BOLTON GARDENS, S.W.5.
Christmas, 1922.



To the respective Presidents of the aforesaid Associations, namely, the Hon. John W. Davis, formerly Ambassador of the United States to the Court of St. James's, and the Hon. Sir James A. M. Aikins, Lieutenant-Governor of Manitoba, the following letters.

MY DEAR KINSMEN,

When the good people of *The Times* and *Manchester Guardian* newspapers heard that I was paying you a visit, even though the main purpose of the mission was legal and fraternal, they took me in pledge for a column or two of their great journals. And my first duty is to acknowledge their kindness in giving me a free hand in here reproducing those articles as I wish, and in plagiarizing from myself. So in these letters to you I am going over again those sketches and impressions the material for which you so largely set before me. Unconsciously, delightfully, you were my collaborators. Far away at San Francisco and Vancouver lay the appointed task, but to get to and from these places, there must needs be sight and travel. Thence sprang those reflections, which I venture now to repeat to you in these letters of remembrance.

On my return voyage—Montreal to Liverpool—

when we lay befogged in the Straits of Belle-Isle, I set pen to paper. Legal surroundings you would say: the icebergs, gleaming luminaries, imposing but cold; the atmosphere, fog; progress, at a minimum. Like a parable it was—judges, Courts, procedure—a parable of the law: icebergs, fog and movement, gentle and slow. I felt like a heathen, constructing an ugly image of his own god.

But I was saved from the heathenism. For the heart within me glowed like a fire at the memory of all your kindness. You had been my companions, as the great panorama of nature and human nature had been unrolled. The view of it, and the points of view of it taken by my guides, philosophers and friends—all had been of interest. I suspect that of set purpose you showed me your nations and your countries at their best; and if in those happy hours of hospitality and open-eyed relaxation I often ventured to purloin your reflections, your generalizations, and your hopes, you must not forget that an acquisitive Scot reckons such robbery to be an attribute of friendship.

As for the New World of America and Canada—that visit in which you kept me company was a pilgrimage of good-will. I own, as I say, that I was skilfully led and had a partial eye, but, even so, the impressionist sketches of both nations and countries are not, it seems, to be allowed to be fugitive. They too have to suffer the compulsory detention of the printed page. Hence

their inclusion in this book, where they lead up to the graver matters of the law.

“To see ourselves as others see us” is a severely imaginative exercise, albeit that the gift is divine. Let us compromise, dear Kinsmen; if the strain on your own eyes be too great, pray use the eyes of a friend. Most of that great panorama was to you familiar ground; *ambulandis*, you talked, and the privilege was mine. As the landscapes moved along your histories recounted themselves and lived again. This is how I saw and felt.

Said one to me: “There are three Americas.” “Yes,” I replied, “and a no-man’s-land.” We were canvassing those differences and contrasts between communities which naturally strike the mind of travellers from East to West across the vast breadth of the United States.

My daughter and I were such travellers. We were, of course, well aware of at least two other well-distinguished and powerful sections—the America of the North-Eastern States and the America of the South, down through the Carolinas to Florida; but we were discussing what we were seeing.

New York is by itself. It represents cosmopolitanism in congestion. The sky-scrapers which art, with a hesitating hand, is beginning to touch—here alleviating baldness of outline, and there throwing an occasional ornament of façade over a precipitous blank—signify much: the energy

and daring that designed and constructed them, the enterprise and love of gain that demanded them just there and on these plots of ground, and that defiant heedlessness of the future by thus turning transport from ease and convenience into scuffle and deadlock.

This future has come soon. Already, for instance, at the close of business hours, each of these reservoirs, twenty to fifty stories high, pours its living tide on to streets unable to contain the human avalanche, and standing room in any sort of transport can be reached only by a muscular triumph.

London's transport problem is hard and difficult; but it is child's play to this. What disarrangement is here! For this has happened in a land where there is so much of God's earth to spare.

Perhaps the time is at hand when the tenement village, at appointed hours, will assemble on the roof and take its flight from the city through the air! Unless this relief comes, the system is doomed—done to death by its own success. Or perhaps the scraper will go out of vogue when men begin to realize again that cities should be places to dwell in and not to dwell out of.

.

Whenever the congestion is escaped from, the love of Nature and of art refreshingly shows itself, and that in two ways rare in domestic England. Housing has some real relation to architecture. The effort everywhere appears—to add the veran-

dah, to give individuality to the home, and to avoid the slavish reproduction and in-building which stamp the ordinary British suburban street with sameness and make it lean towards squalor.

And the freedom of open-air life is accentuated by the entire absence of enclosures. The garden plots stand free to each other and to the road, and the passer-by walks, so to speak, among the roses and the flowering shrubs, while this form of trust in the people seems to have made a destructive theft and vandalism unknown. All over the United States this excellent un-Englishness appears; get but a little within the Canadian border, then the fence and the exclusiveness are again resumed.

The population that thus spills over from congestion, on to what may be termed the home States, is of their democratic best; what remains is that *mélange* of population the absorption and civilization of which has been the glory of America.

We are not thinking of the richly living, beautifully and artistically housed New York, but of that other New York which appears to have drawn its population from all the nations under the sun. In the cosmopolitanism of New York one ingredient of race may often no doubt neutralize another ingredient of race, and so local and political issues may, on the average, be rendered safe from prostitution to class, or to non-civic machinations.

But the true glory of American progress is that—in New York and far beyond it—in the process

of that welding of races, and into that which we call cosmopolitanism, it has infused a common love and a common pride. Love for the land where dreams come true. Dreams of more secure reward for honest industry ; dreams of freedom from the irksome restraints of conventions which have outlived their day ; dreams of equality not of the cap-in-hand apologetic kind, but frankly avowed and sincerely prized, equality which makes the exceptional truckling to rank by the few a subject of hearty laughter.

Varied as the peoples may be, they find in such love and dreams a common realization of things which they rank high in the sum of human happiness. For historical reasons, for political reasons, or simply for the need of getting some outstanding reason, they ascribe these to the constitution, as a central fact in, or a useful symbol of, their common attachment to wholesome sentiments and practical advantages. Who denies that you are a celebrated people ? But are you not also a celebrating people ? Everybody celebrates : play and festival, speech and song, rapture and laughter ; and the races—all of them—go into that din and clamour, and they come out of it Americans.

But, my dear friends, what right have I to tease you ? And anyhow, where was I ? Still at New York—New York which is, *par excellence*, the amalgamator City.

It is the fashion to decry American political and municipal government ; but with all its

faults—and the very noting of them as faults loosens them at the root—it has, by the influences of constitution, education, religion, and law, kneaded and moulded and bound together what would *a priori* have been described as an untamable, immixable mass, giving it cohesion, a general unity of ideals, and an upward direction. This is one of those fundamental virtues of America which make thoughtful men feel that if, forgetting herself, she could be induced to enter into those regions—say, Central Europe—where the future is black with racial antagonisms, she could help along at once, with power and with a priceless experience, and on an international scale, the forces of harmony and healing. We may hark back to this again.

Out of this agglomerate three races project themselves into public issues. These are the Jews, the Germans, and the Irish. Until now no public man could afford to treat them as negligible. But the time seems near when the separatism of these races in thought and purpose from their fellow-citizens will largely disappear.

There can be no doubt that anti-Semitism has been attempting to rear its head. As in England, a certain clever journalism seems to take to it. But the mass of men who can lead opinion does not, as I gather, treat it seriously. Among those who are led, race hatred is, of course, always easy to inflame; but there is no widespread, vivid interest about the topic.

Fear of the Jews has appeared in university circles, but has been easily out-argued. The best point in its support—its alleged association with Russian horrors—has faded away with the decline of Leninism. There is not stuff in it for a public issue. The grudge against the Jews—and this is greater in Canada than in the States—is that in countries where the clamant need is for industrial and agricultural labour, the favoured race—for reasons long drawn out in history—still take, not to production, but to distribution and finance.

The Germans form, for all public men, a more serious political problem. They are unquestionably industrious in every walk of life; many have the capacity for leadership by reason of their thoroughness; but they are difficult to amalgamate on account of that dangerous cross patriotism which does not prize the citizenship to which they owe so much, because it takes it as qualified by a nationalism of origin which up to the Great War made no secret of its demands. Whether that stupendous event has changed this attitude remains to be seen. I honestly think that it must have done so; and I do not believe that the general trend of American opinion and policy in Europe, and towards a closer British *rapprochement*, would suffer deflection by or because of German-American influence.

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The Irish are, in New York and similarly situated Eastern States, a great and potent public

force. Their numbers are large, they have a genius for organization and display, and they have taken to politics with fervour because here was a channel in which every anti-Britisher could clinch his cause with a reason.

But a change has occurred ; I had almost said the impossible had taken place. The revelation of it came to me early on my visit—in the last week of July. Britain had granted self-government to Ireland ; the useless shedding of blood seemed to have been stanchèd ; the first beginnings of constructive rearrangement had appeared ; capable Irishmen of affairs were leading their country. It was doubtful whether I should allude to the topic ; there was the risk of unbecoming intrusion into what, in one aspect, was a delicate American situation.

I took advice, but the advices differed. When I broke ground, however, it at once appeared that it was already ground prepared, and that words of sympathy and hope and trust, spoken, not as an Irishman's boast, but as a Britisher's belief, met with an instant and uplifting response. Could it be possible that Englishmen and Americans were at last seeing eye to eye on Irish affairs ? The powerful, sagacious, public-spirited men to whom I spoke were moved beyond words by the desire for the obliteration of the past, with its hatreds and its sorrows, for allowances for the new Government in its difficult task, and for good wishes, both for Ireland and for a really United Kingdom.

The truth shone out that these men saw themselves, and all of like mind, as actors in a new era, when their instincts for friendship with the old Motherland could no longer be thwarted by the call of Irish wrongs. I am no longer in public life, but I am not sure that since the grant of a Constitution to South Africa British statesmanship has ever reaped a swifter or richer reward than in the shifting of the Irish issue over from England to Ireland itself, transmuting the problem from being whether England can rule to whether Ireland can rule the Irish people, quelling disorder, restoring law, and making civilized life secure.

Since that evening sad and tragic events have happened. Arthur Griffith has sickened and died ; Michael Collins has bravely perished in an armed encounter ; Childers has been tried by a Military Court and shot. The name of a Republic has been used to justify organized crime and systematized terror. The name of patriotism has been used to bring a Free State Government to deadlock, and to justify the assassination of its senators. And the name of Ireland has been used to justify Irishmen in reducing their fair and beloved land to shambles and to ashes.

It seems a strong thing to say, but the impression of America's attitude which was formed shortly after I landed on the American shore has never been shaken. Moving across the continent, and hearing of one disaster and then of another, I did my best to gauge public opinion on that

underlying issue. Tragedies, tragedies repeated, have not shaken America's sense of relief and satisfaction with British policy; they have moved many to genuine repulsion at civil strife, and some to doubts as to Irish capacity. But upon the whole this last feeling may be transient; and, with a happier turn in Ireland, it would disappear.

The outstanding truth is that that country has been lifted bodily out of the region of American politics; only one thing could ever restore that evil past—namely, a fresh interference by England in Irish affairs. Should that happen, however caused, who can tell the misery of it? Should that not happen, then one American public issue has vanished—the Irish question is out of the international sphere; it is dead.

Thus ere I left New York—powerful, capable, kind New York—I had already heard the response to good-will, the notes of a race-deep harmony. And so with a wondering elation of heart we took rail for the Second and the Third Americas.

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The surprise of Chicago, as compared with New York, is that the sense of constriction of the latter gives place to a sense of expansiveness; and activity has vigour without fever. The second surprise is that separation in space, with elbow-room and plenty of it, has bred a sense of independence of all the other Americas, including everything east of the Alleghanies.

Here is something else than the New York and

the Washington world. Whether or not it feels, with its head up against Lake Michigan, that it is part of that vast frame which has its feet planted at the Gulf of Mexico, anyhow the Middle West is the biggest, most real fact on the American Continent—an America self-contained, of enormous fertility and resources, and with a population second to none in energy.

When it is remembered that its area embraces the basins of the Missouri, Ohio, and Mississippi, what more need be said? Size, importance, strength, a continental leverage—all are here.

As you hear the converse of business and professional men, who are accustomed to take a wide survey of public affairs and of inter-State relations, the truth dawns upon you. And when you see the unending traffic of wealth and business and luxury along the Michigan Lake Shore Avenue you realize that here is a country to which Washington dare not be content with issuing a ukase; to the Middle West, Washington must render a reason.

Nor can the New York Press either interpret or control this very different and distant community. Manchester and London may exchange views—but a few hours apart. But the one thousand miles of ground from New York to the nearest radiating centre of the Middle West make such connexion impossible. After the space has been surmounted a second America has been reached—an America of special needs, special interests and special views.

The Constitution and the Flag—certainly the Middle West stands for those. The script of the one and the folds of the other are, happily, wide enough for all, and no trace of separatism appears—the Union has been sealed with blood. But in the region of policy, with all that variety of disposition, of situation and of need, the task of the politician, especially when confronted with an international danger or an international duty—the task of the statesman, must start with that stupendous first step, namely, that before America can speak with authority it must first attain unity of mind. Here is a problem worth thinking over.

Do not, however, let us come to any conclusion about that until we have reflected on a third America.

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As the traveller passes from Kansas to the South-West, reaching towards the Pacific, with the help of the determination, the enterprise, and the administrative capacity of, say, the Santa Fé Railway, nothing avails to ward off that long-drawn depression of the spirit which the interminable mileage of desert produces. As you cross New Mexico and Arizona, death and the genius of desolation glare over the waste. An Indian encampment here, and there the ruins of another, remind you that man lives—and disappears.

The absence even of bird life is pitiful. In a run of over a thousand miles I saw only one eagle and two turkey buzzards. Here and there, by

keen watching of the arid ground, you may discern the scampering of the little prairie dog. Treeless, waterless, shadeless, alkaline waste. Query—will the research of the chemist ever avail to reduce these alkaline deposits to the service of man? Will Nature, in its most defiant and forbidding mood, ever be subdued in some gigantic scientific triumph? It seems for all eternity a No-Man's-Land.

The culmination of this sense of gloom might naturally have been found, one would say, in the Grand Canyon. But the great reality—described so often, but beyond all describers' power—so far outranged the former feeling by its impress of the strength of Nature's disruptive power, and of the littleness and transiency of man, that the United States and its problems were lost to sight in a blindness of awe and wonder.

The level of the surrounding country is 7,000 feet above the sea; suddenly you reach the edge of the vast chasm and you look over and down, down, sheer down, down for a perpendicular mile. And through the gloom reaching away beyond sight you know that the vast Canyon extends, but out of it there loom up before the amazed vision those bastions which the morning and the evening sun gild with fire. You cannot see the corroding stream, but you know that the Colorado River sweeps along in that central depth; and learned men tell you that each foot of the deepening was the work of one hundred years. And this is Nature, is it? If so, space and time fail

to express it. The face of the Infinite carved by the chisel of the Eternal? That might come nearer it; but it causes, as I say, a kind of open-eyed blindness of awe and wonder.

Then after a night crossing of the Sierra Nevada and the Coast Range, one woke up to a new world, a reaction in exuberance of verdure and of beauty, a world not realized—a third America.

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It is well to enter California by Los Angeles. Much you may have read and heard and expected of San Francisco; but here, instead of what in one's ignorance one supposed to be merely one of earth's luxurious corners, you find a great, beautiful, powerful, and energetic city. Its centre already, alas! is climbing to the sky in the exuberance of its business energy; but on the whole it is laying itself out very spaciouly in the sunshine over fields which, at a touch, seem to leap up in fruit and colour. This is so also, not in favoured patches, but everywhere and anywhere for a thousand miles along the Pacific shore, to the great ports of San Francisco and Seattle.

The point is—here are these States forming one community, self-contained, rich in resources, Oregon itself a vast bed of natural and mineral wealth; this is a third United States. But what has it to do with the other two?

Again the Constitution and the Flag—they count for much; but it is perfectly clear—and that is the thing worth thinking over—that real

unity in interest, in needs, and in view, can be attained only after not a little adjustment ; and the statesman who, without that, would declare for the whole might divide his country. In my opinion, too little allowance was made for this class of consideration by the Allies when streams of blood were being shed in the Great War, and America appeared to stand stolidly looking on.

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After much reflection I think that in this substantial matter, the policy which, under the Constitution, he imposed upon the States, making the outside world chafe and wonder, President Wilson was too severely blamed. He had to unify his country. In this he may have adopted tactics whose indirectness chilled both those without and those within it. The revelations made by the publication of Mr. Page's reminiscences appear to demonstrate that. But on the main matter—no common American interest, bear in mind, being openly visible—he had to bring those three United States into line, to keep the Union solid. And this, it will be remembered, long after minor issues have vanished—this he did.

I declare that I think a sacred unity in American opinion—very hard to achieve, very valuable to the world—may be nearer at hand than most people think. So far as opportunity went, I did my best to gauge opinion upon the lines of a European settlement, refraining, for obvious reasons, from introducing the question of America's position as a creditor. This is what

I set down as the common denominator of leading, educated, public opinion as I measured it.

In the first place, on every issue as to the war, its policy, its outbreak, its methods—upon all of them Germany's position was reckoned indefensible.

In the second place, all thinking Americans wish now that America had declared so sooner and more unmistakably,—many citing the sinking of the *Lusitania* as an incident which, in less academic hands, could have solidified and energized the entire Union. After the recent revelations of the communications and state of mind of that truly great and faithful ambassador, Mr. Page, I should place that state of mind of the American people as almost universal. I incline to think that Mr. Page revealed not his own only but his nation's thought upon this topic, and that history will so record it.

In the third place, they—if only the politicians would let them—would do much, almost everything, to blot out the past, and have others do the same. They do not hate the Germans; but there is much in European policy that simply does not mean business. Old grudges, on the other hand, mean stagnation and loss. Let there be an end.

In the fourth place, surely, after all that has happened, Europe, and France in particular, has the sense to see this. Now for a fresh start. Undeniably, the Americans wish to love and to deal gently with France, but the rebuff to their

great bankers and further recent events in Paris have made the feeling hard to sustain.

In the fifth place: "Join in? Of course, America would join in. Do you think we are not big enough to do that? Just let us take our bearings, and you will see. Do you think when we look at the Old Country we do not know what gallantry means? We know that we are a bit heavy in the going. Give us time."

Yes; upon the whole, old rancours are fading away, new and sympathetic chords are being touched, fresh avenues to co-operative service are appearing,—and this within the Anglo-Saxon race. And from that centre the hardened optimist may be allowed to hope that light and order may spread—God speed them!—over this poor, dark, distracted world.

Thus it was that America impressed me; thus I ventured to appraise its sights, its strength, its people, its attitude, its heart. It is right that I should add that the recent financial negotiations between the two countries, adjusting the greatest business deal in history, the terms of interest and repayment of one thousand millions sterling, give me no cause to recall, but on the contrary, and with emphasis, all these things confirm, these opinions.

In the middle of August, as you remember, I was handed over by the American Bar to the hospitable custody, at Vancouver, of the Canadian Bar Association. But the American appraisal stood; its values were not changed. They

remain. As this book proceeds, it will be seen how great a complement was formed to the journey west through the States by the journey east through Canada. The same language, the invisible frontier on which no fort frowns, the kinship of pursuits, of accomplishments, of tastes and of ideals, the fresh memories of battle in the same cause, and the same old loves in letters and in history.

And now, my dear Kinsmen, let us drop high politics for the moment. You will allow that I was carefully shepherded in the United States. When, for instance, in the joyous company of twelve of your greatest men, I was side-tracked in Chicago on a Saturday afternoon, then it was that—(curtain)—Yes; I was carefully shepherded. Perhaps it was for this reason that it was not considered safe that we should go straight west, and that we were switched southward at Kansas. Yet I feel sure that the reforms in Utah would have been an interesting study.

One did pick up, however, stray gleams of news from the powerful peoples of what I call the due West.

One day moving on rail I got hold of an Oklahoma newspaper. It does sometimes happen that the habits of a people—what they like, what they would wish to have, and what they might be tempted to do—are not badly seen in the advertisement column of a sheet which has a wide circulation. I looked over these advertisements and concluded by saying, "Bravo,

Oklahoma." As a Scotchman I naturally think that banking is a high and most dignified occupation, fitted for the magnates of the world, picking its steps very sedately; removed, quite removed, from anything like commercial rough-and-tumble. But all over the States—and I suppose, although not to the same extent, also in Canada—commercial competition even in its most commonplace aspects is not unknown in banking circles. I had seen indications of it in other newspapers,—how banks outrival each other in such advertising as would scare the life out of the dainty-fingered British banker. Oklahoma is blunt and frank in its methods, like, I suppose, not a few other States. This was the advertisement:

**"CALL AT THIS BANK AND GET A
COMBINATION ICE PICK AND
BOTTLE OPENER.
THE CAPITAL NATIONAL BANK."**

The advertisement was signed by the Bank's President and Cashier.

In my address at San Francisco I made a respectful allusion to the varieties of State Law on the subject of the matrimonial relations. A vivid turn was, however, given to my reflections upon that topic ere I reached Vancouver. A Seattle newspaper was put into my hands, a leading headline of which was:

**"BIRTHS, MARRIAGES, DIVORCES AND
DEATHS."**

This seemed to be a regulation heading. The names of the parties to the divorce cases were duly stated, and the grounds of the decree. These grounds were each of the following: Cruelty, Incompatibility, Desertion, and Non-Support. All this must be according to the law of Seattle and the State of Washington. My dear Kinsmen, sons of liberty, it may be all right—I was only remarking—but the like of that makes a Scotchman open his eyes with curiosity and an Englishman close his with despair.

Ah, after all, how little one can judge of the heart of Society by the fringes such as I have described! I saw over and over again the real and true life of America. From the home of one of you in Long Island to the home of another in Winnipeg is a far cry, and from these many other centres of influence that I sampled in that great quadrilateral,—New York, Los Angeles, Vancouver, Montreal,—I was able to deduce that the solid elements of Society are unshaken, that the pride of country is open-eyed to the need for caution in public affairs, and that a progress or success which is won without character or by cheapening the moral currency is heartily despised. These are the justifications of our kinship.

So till to-morrow: good-bye,

S. OF D.

LETTER II. MOUNTAIN, PLAIN AND LAKE

DEAR COMPANIONS,

We were across the Canadian border. A host of able men accompanied us from the San Francisco meeting to that in Vancouver. At the head of them, my dear Davis, stood yourself: and when in the latter city you responded at a great gathering for the Bar of America, I declare to you that I think it deplorable that such a fine and worthy utterance should not be put in permanent form. It would adorn any legal record.

In entering Canada from the United States by way of Vancouver, one may look in vain for any visible signs of being under a different rule. The flag is different, but the habit of flag-waving is not on the same assertive scale; yet at first, beyond that, there is nothing that strikes the mind.

As one neared the border,—particularly, say, at Portland, Oregon,—one had been hearing land agents and leading men tell, with a hearty appreciation, of how, for instance, the Scotch Canadians were coming through to the West American States and helping to build them up. After entering Canada the exchange of population became more marked, and was seen to be mutual.

In Vancouver it must needs be so. That noble city, on the noble Sound, is bound to attract

pushing and industrious men not only from other parts of Canada, but also from adjoining States of the Union. There seems to be not the slightest sign on either side of sinister permeation, such as Belgium underwent from Germany in the pre-war years. There is good government—healthy, decent government—on both sides of the border; and men choose their lot and portion as inclination calls them or as fortune seems to beckon. The international feud-stirrer—there is no job for him in British Columbia.

Crossing to Victoria, on the Island of Vancouver, is like going from San Francisco back to Los Angeles—from a hive of industry to a kind of dream city, planted among flowers, half the population of which seemed to be plumping in the water, with a great merriment, under the summer sky. Yet in the Island of Vancouver the British connexion is seen to be most emphatically pronounced and very real.

What has happened? I do not know. One of the shrewdest observers whom I met on the American continent, one who knew British Columbia better than any other, said to me: "I think that the war has done much to strengthen the British Imperial connexion; and the lateness of America entering to help has delivered a damaging blow to the idea of being associated politically with the United States."

The motives for this international invasion of Canada from the South—a very friendly and natural invasion—change from point to point.

In Vancouver City the motive is commerce; in the Rocky Mountains, as at those attractive retreats like Lake Louise and Banff, it is recreation; in Alberta, Saskatchewan, and Manitoba it is agriculture. I incline to the opinion that within the space of twenty years those mountains will have become the playground of the world and these provinces the granary of the world. Already in the sumptuous hotels of the one the American citizens reach a proportion of 70 or 80 per cent. of the visitors. On the other, the middle plains, it is a different and stiffer affair; but good and capable American farmers are continuing in considerable numbers to take holdings of Canadian land.

Thus intermixture and neighbourly feeling among families whose members are, on different sides of the border, pursuing the same avocation, are more and more working the work of human unity which not all the devices of politicians can ultimately defeat. A voluntary open rupture between these two peoples is unthinkable, because that would be voluntary laceration. What will be the effect upon this good feeling of tariffs, like this last Fordney tariff, to which the President of the United States has lately set his hand? Will it disturb it, or will it cut into good feeling like a knife?

There were rumblings about it, but no great alarm or discontent. But in practice, as a tariff, the thing may be more serious. Let us hope it is—in cause and in effect—a passing phase.

But observe. There were and are two great unions in growth in Canada ; the unity of Canada in the sense of binding its far-spread territory and interests together, and the unity of an Empire in which this self-realizing nation stands a partner and co-operator. But alongside of these stands a third unity, wider than Empire and as wide as English speech, springing from the geographical and social causes to which I have referred, and working out the approximation to brotherhood on a still greater field. A blow at this last does not injure the other unities ; yet any such incident would seem to discerning minds a falling back from a wholesome ideal.

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It is precisely in such particulars that Canada does appear to me to owe a priceless obligation to the great and dauntless pioneers of her land transport. It has been so on a magnificent scale in the United States, of which I have cited but one example, namely, the Santa Fé Road. Stupendous difficulties there were, and a mileage of lonely waste which would have prostrated the energies of all ordinary men. I know that as the narrower vision sees it the power and patriotism which subdued and overcame these vast obstacles had little but its underside. You do not look at it so. These men were your nation makers and your nature breakers. By faith they removed mountains, and of them it may in countless cases be said that the words of the prophetic vision have literally applied to their case—"the wilderness

and the solitary place shall be glad for them, and the desert shall rejoice and blossom as the rose."

In Canada that spirit and that triumph are linked with some of the most romantic essays of human endeavour.

When, in 1885, the eastern and western sections of the Canadian Pacific Railway were joined up in that one vast system from the Atlantic to the Pacific, the dream of a united Canada became a reality and its nationhood was guaranteed. People still tell with pride to each other the story of Strathcona, and Mount Stephen, and Angus; how ruin, personal ruin, the ruin of their dauntless enterprise and dreams of hope, stared them in the face, when the vast undertaking was about to go to pieces for lack of financial aid, and when the only credit they could offer to the world was the hope and belief of three Scotchmen of humble origin but of trustworthy character and indomitable pluck. Mount Stephen among the London financiers telegraphed the impending failure of all efforts. Strathcona sent back the one-word wire "Craigellachie." Angus worked sleeplessly in Montreal. Then Mount Stephen, obeying the Gaelic injunction, "stood fast," and the situation was saved. This is how men sum up the great transaction: and they place these pioneers in rank with Wolfe and Durham.

People of many nations wondered admiringly at the tenacity, the courage, the adventure of the Canadian troops during the Great War. But were not these the familiar things among which

these gallant sons had been brought up? This adventurous, enterprising spirit, notwithstanding occasional colossal losses, seems to have passed into the railway system of Canada, and to be accompanied by farsightedness and a fine *esprit de corps*—conspicuously so, for instance, with the great railway already mentioned, which adds to its central system new extensions, including shipping over both great oceans. The point which I am upon is this: that such administration has unified Canada, strengthened her sense of nationhood; while over all, Canada herself, by an incomparable stroke of fortune, is linked up with the greatest naval protection in the world.

Assuredly, the surmounting and the penetration of the Rockies are a monumental record of human achievement. My one and only grudge against the Canadians is that they seem slow to realize the splendour of their good fortune. They are less insistent upon their greatness than the Americans, and less than the Australians, and in one sense of course that is to the good. But they have been infected by the widespread trouble of the age—to shut up the market of opportunity. Political development has exceeded their natural growth, and they whose lack of population is their and the world's loss demand no less for import than citizens ready-made.

The outstanding virtue of American development for three generations was that out of unpromising material she moulded, energized and

set free great additions to an educated, industrious, patriotic citizenship. Does the remembrance of that quality fade even in America? Is it lost upon her neighbour? But I must stop. I know and know very well that there are other sides to this problem. My heartfelt prayer is: God help Canada in working it out. This is a sample of the thoughts that kept singing through the brain as one threaded the grandeur of the Rockies and swept down and on to her illimitable, untilled plains.

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When after crossing the great prairies, where boundless fertility seems to respond to the lightest touch of tillage, you come eastward to the shores of the Great Lakes, you are in the range of another problem, prominent and far-reaching—that of water transport. The constructive works necessary for the development of water transport would appear to be child's play as compared with that tremendous conflict and that accomplished conquest which the American and Canadian land transport represents. Yet it will require similar tenacity and, perhaps—for it is on the fringe of international questions—greater adroitness.

The problem is,—to give the ocean-going steamer a canalized entry, or rather canalized entries from the St. Lawrence to the Great Lakes.

I have purposely used the plural. For when one thinks of sea-going traffic penetrating into the interior of the Continent one naturally thinks

of the great obstacle of Niagara Falls. To counteract this there are the works in and about the Welland Canal. By that route, if that system were complete, one could sail on board ship from the Atlantic up the St. Lawrence through Ontario and Erie and then northward over the vast extent of Lake Huron and on to Superior and Michigan. It is in regard to a scheme such as that that what I have called diplomatic arrangements come into play. But these would not, one would think, arise—at least with any insistence—in the case of the Georgian Bay Route, which, leaving the St. Lawrence at Montreal and utilizing the Ottawa River, would make the fine town of that name, the capital of the Dominion, have somewhat the same relation, but on a much ampler scale, with the West Atlantic that Manchester has with the East Atlantic. Right through the canalized rivers Ottawa and Mattawa and tapping Nipissing Lake, it would enter Georgian Bay—a direct deep-water communication between the Atlantic and Lake Huron.

I say nothing of the merits of these schemes, but when one reflects on some of the broad facts of the case, including the notable one that the traffic at Sault Sainte Marie is five times that passing through the Suez Canal, one may cherish without undue speculation the hope that rivalry will be in competition rather than for exclusion. For these energetic peoples, surrounded by unbounded agricultural, arboricultural and mineral

wealth, waiting for the magic touch of transport, there appear possibilities ample enough to warrant both of these great enterprises, and all to the conspicuous benefit of the world at large. These are no empty dreams.

Engineers, contractors and business men put to me this now well-known bit of knowledge. There are many industrial concerns in which it has been the by-products which have enabled them to turn the corner. And within even the last decade a great advance has been made in utilizing and in converting to profit a by-product of canalization, namely, the electric power that can be generated at every lock. These conceptions are large, but the fruits of their realization would seem to point, on a national and international scale, to a future full of hope.

This is not the place for the enumeration of details, but the schemes are more than in embryo, and in the minds, at least of all Canadians, the vision is complete. It is that of a Canada whose seaboard has been increased by a thousand miles. Shipping would, of course, suffer the delay which canal traffic for a small portion of the outward or inward bound voyage involves. But apart from that, what remains is an engineering job, small as compared with many which are at this moment under contract in various parts of the world.

The impetus which such water transport would give to the development of Canadian resources is almost beyond belief. A place like Sudbury, for

instance, where the rich traffic in nickel is already famous, would be merely one among many where a great traffic in mineral resources might spring up—places and deposits which, up to now, have been sterilized for lack of cheap access to the markets of the world.

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From water to a stronger liquor is a not unnatural association of ideas. And I am glad to follow that association, because I wanted to get nearer to the problems of the home and the social life of your peoples. So “leeze me on drink.”

When private pleasure and the public good come into conflict the former always beats the latter in the region of fun; and the breaking or break-down of the law provokes less of protest than of chuckling and hilarity. “The Deil’s awa’ wi’ the Exciseman,” says Burns, and he was an Exciseman himself. As Societies, then States, then Commonwealths adopt and compel the change of habit, the joker’s field grows wider, but his trade goes on. It is nearly thirty years since I heard my stalwart friend, Sir Wilfrid Lawson, tickle the British House of Commons by a story of a toper who slid out of a flatboat slap into the waters of the Mississippi. They struggled with him, towed him ashore, laid him on the bank, artificially restored his respiration. “Where am I?” says he. Answer: “Iowa.” “Iowa,” he roared, “Iowa! Prohibition State: throw me in again!”

In short, I could hardly be a Britisher accus-

tomed to hear the talk of politicians, and of clubs, and of philanthropists, and of Philistines, without wondering how prohibition of the liquor traffic was working in the United States, and in Canada.

I confess to having gone prepared for witnessing, in what are called the best classes of society—a phrase which I hope they warrant—that Prohibition would be discussed with a lift of the eyebrow as if it were a craze, or a hook of the lip to signify a sneer. I watched for all this from the Atlantic to the Pacific, from east to west, through the middle States, right into California and all along the Pacific shore. My word is that, looking earnestly for it, I never found it.

On the contrary, I would, from my experience, and from many inquiries, put my testimony as follows: The liquor saloon is now recognized to have been a curse in America. It weakened its fibre, lowered its tone and clouded the life of men, especially labouring men, with peril. Over and over again I have been told that the country, the village, the small towns, needed Prohibition even more than the large towns; and I came to conclude that this was realized to be so, simply because the connexion in these smaller communities between cause and effect was more clearly discerned.

To various persons, whose judgment and knowledge I thought that I might rely upon, I put the probing question: "Suppose a general election on that issue, or suppose a plebiscite of the American people on that issue, what do you

think would be the result ? ” The answer was in all cases cautious and firm, but the same. It was this : “ If the issue were presented to the people between the continuance of Prohibition and the modification of it, then we think that Prohibition would be maintained ; but the minority in favour of modification, say in the direction of limited supplies under Government control, might be considerable. But if the issue were the broader one—continuance of Prohibition or its abolition—90 per cent. would be for continuance and 10 per cent. for its abolition.” On all hands I was reminded, by way of addendum, of the women’s vote. A powerful support, as they conceived, would be given by that vote to Prohibition in its most absolute terms.

In Canada the situation is different, because on the west the province of British Columbia, and on the east the province of Quebec, have not adopted Prohibition. The rest of Canada has. Instead of that, in those provinces they have the system of Government control. The trade as such in liquor is a Government trade, and the supply is to the individual alone. In these circumstances these provinces are apt to become, and have to some extent become, if not a rendezvous, at least a convenience to the toper ; and I was assured that this applied not merely to the topers from the adjoining provinces but also from the adjoining States of the Union. “ Toper,” however, is too strong a word for it. What is really meant is the man who feels that on the whole he

is inclined to sacrifice his convenience otherwise for the sake of having his liquor as before. Then, in addition to that, and particularly in Quebec, it was pointed out that the public revenue was greatly improved by the embarkation of the State in the liquor trade. I think also that I discerned a firm note of demand in the inquiry whether, under the restrictions and checks which the State imposed, there could be said to be a balance of harm in continuing that situation.

As illustrating the real good effected even in a Government control province, it must be remembered that in it, equally with one for Prohibition, the saloon is dead. I give this concrete illustration. In a small town in British Columbia I made special inquiries. In the territory adjacent to it there is a large Indian reservation. Under the former law, notwithstanding all restrictions and cautions, the Indians did get liquor; and it acted upon them like a poison. Then so far as the ordinary population was concerned they had the saloon in their midst. Both of these things have gone. The Indians are safe, and the community is more orderly, more self-respecting, with an advance in decency and quiet. Throughout the whole district there is a general sense of contentment with the state of matters which has been reached.

Statisticians will have to tackle all these problems, and no doubt they will do so, and I hope without undue bias either way. Wisdom of choice among the three things—absolute pro-

hibition, State control, and free liquor—can best be settled by a safe induction arrived at without party preconceptions. Since, however, my impressions have been wished for, I have set them down exactly, I think, as they were produced upon my own mind.

Meanwhile millions of free, responsible, self-governing people have chosen Statutory Sobriety. They have chosen it deliberately, contending with an astute and highly organized trade interest, and even with great constitutional obstacles, and prejudices without number. It seems but a slender demand when it is asked that Statutory Sobriety be given a fair chance.

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The position of Canada as compared with the United States is singularly different in two respects. The one, of course, is climatic: in Canada the arrest of outdoor pursuits, and notably agriculture, is complete for, say, five months in the year, bound in the grip of a rigorous winter. This is familiar ground.

But the second respect has reference to what I may call the middle States and middle provinces. The Canadian prairie and the prairie of the United States signify two essentially different things. Both are immense territories extending to tens of thousands of square miles. In the case of the United States, stretching away from Kansas and Utah, down through New Mexico and Arizona and into Eastern California, the prairie is desert: and the desert is desert indeed,

a something perfectly baffling and crushing to all who think of the future and the fate of man. The hope of mankind seems there, as I said in my last letter, to lie in the region of chemistry so far as that hope is in human hands. Otherwise an exercise of creative energy on a stupendous scale would be required to alter and make liveable these immense and desolate territories. In Canada, however, the middle States are a prairie, and, once the winter snows have disappeared, the prairie shows itself to be a rich alluvium, responsive even to the lightest touch of the cultivator's hand. For at least a generation these prairies, even without intensive farming, or cropping rotation, promise an inexhaustible fertility of supplies for the nourishment and use of man.

Canada's want is population, and upon that I have already dwelt. If one were to treat it as a logical proposition, one would say that it reached the absurd to think that nine millions of people should be in the possession potentially of these enormous resources. It is impossible—and Canadians, of course, most fully realize it—to think that with such paucity of numbers they are capable of entering into the task of development of this vast inheritance. Canada lies open in all those regions—and they are much wider than the middle States—to which I have referred, to receive and adopt with ease an influx of population of at least two millions of souls per annum for at least ten years to come. No one of these immi-

grants, if industrious, could, under a wise administration, fail to succeed in the ordinary sense of making a decent livelihood for self and family. Where is the population to be found? It cannot be all British; but to millions in Britain this fruitful land, in which people grow apparently so soon accustomed to winter rigour, would prove a veritable refuge to themselves and a strength to the nation and community.

True comfort in Canada and America is found in the forces of nature itself and in the general willingness of the population to develop this conspicuous advantage. In Canada the abundance of the last wheat crop was such as to form an increase over that of the preceding year by no less than 300,000,000 bushels. This is an increase in actual supplies. The other increase is attained by harnessing the resources and forces of nature.

Gravitation, the fall of the water level, is utilized quickly and on a vast scale. From Niagara itself—whose force is converted for electricity, heat, light, and energy over a wide and widely expanding area, including large and distant cities like Toronto,—from that down to the remotest rivers or upland lakes, the eyes of men seize quickly the value of simple altitude as a source of wealth and power. So works of conversion and transmission quickly spring up: and their importance becomes an ordinary fact in which every householder participates. The price of electricity is very low, and the use of it

for nearly all purposes of the household is a common affair. What in England would still be considered a rare and interesting novelty is there an ordinary convenience, and the scarcity of domestic labour is thus to some extent made up for in every-day labour-saving appliances. When the former was complained of there was always the explanation given of the help supplied by the latter. Oil, too, is being tapped scientifically and with more determination than ever before. And natural gas is in some parts so abundant that its storage is practically impossible. The town of Medicine Hat, for instance, in Saskatchewan, stands lighted day and night.

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Coming farther east, one marks a double change. The great towns are developing not in one, but in many directions. The sense of civic duty is noteworthy: the city itself more and more has its claims recognized—in conception, in planning, and last but not least in culture. Will you forgive me—I am sure you will—if I write down a word of what was my experience, without any exception—namely, of the value which all classes of every community, in no grudging but in a very jolly spirit, concede to Scotchmen and Scotchwomen as helpers and up-builders and enlightened leaders in all these communities.

Of course you are familiar—ah! how familiar—with the Englishman's fail-me-nevers against his frugal and industrious northern neighbour.

You ascribe to some kind of asthma the old trouble of these wheezes, but you are not alarmed, you know them to be consistent with a tranquil old age both for the story and its teller. The thing has by this time got a new twist: the joker is the joke.

Scottish traditions of religion and education—both framed in a democratic mould—seem readily to overflow in any freedom-loving country where people govern themselves. This, of course, is apparent in the United States, and it is most marked in Canada. From university life down to the common school the people are being drilled on Knox's lines—giving capacity, wherever found, its upward and onward chance. Already one could discern by talk with university authorities that questions even of overlapping are beginning to arise; and a very healthy rivalry does exist.

One check in the far West was given. In the Island of Vancouver, within walking distance of Victoria, there is on Point Grey—so named after a distinguished Governor-General—the site of what was to be, and no doubt will be, a great university. On three sides of it are the waters of the Sound, and across, right in front, are the Garibaldi Heights, clad in snow, named after the Italian patriot, all of this surely a situation inspiring, unexcelled. But the Great War even there placed its arrest upon local development. Local issues arose; and the buildings of to-day are merely fragmentary. On alluding even lightly to this topic in Victoria I was, however,

surprised to find the enthusiasm of the response for the setting aside of smaller schemes and the concentration upon this great educational achievement. So much was this the case that my anticipation is that that part of Canada will soon be equipped on a magnificent scale with this great Vancouver University.

Upon the whole my impression is that Canada, receiving (and it ought, and Britain ought, to put the matter on no higher a scale)—receiving in its immigration *fair and average samples of the population of these islands* and mixing them with other communities, will, within the next quarter of a century, rise to be a pioneer nation of a new world. In it the resources and gifts of nature shall have been appropriated and utilised by a population in which its best elements—including those of the culture of the mind and the spirit—will have been well developed, and that not for itself merely, but for the Empire at large and for the service of mankind.

I say so after considering not alone those vast projects of land and water transport. Literary efforts were submitted to me, and educational schemes and religious projects, which showed me that a people is in the making from which civilization may find that it can draw also a new spiritual strength. No well-wisher of Britain or America would wish to antagonize Canada; no well-wisher of Canada or America would desire to antagonize the Motherland. There is a unity deeper and wider than the British

Empire at stake ; and the achievement of that unity is becoming, I believe, every year more conscious on both sides of the great ocean.

Very fine examples of active culture are the Universities of Winnipeg and Toronto. The University of the latter has linked up the most powerful educative and scholarly sides of the various churches into colleges, bound together by a true corporate instinct and founded upon culture itself.

In Montreal these changed and vivid conditions are on a more extended scale, but with a new element. It is reckoned that, in a couple of years, this great city will number one million souls. Of these, six hundred thousand are French. Traditions are strong, but civic, legal and Imperial unity is displayed in a well-working and quite striking harmony. In the law courts, the judges must be accomplished in both languages. A pleader beginning his advocacy in English cites a French authority, and glides insensibly into that language, till by the citation of an English case he is recalled to the language in which he started.

In the ranks of citizenship, the same pride in the town and the same attachment to the British connexion appear. To prove this last point, may I cite these words from the issue of *La Patrie*, the great French newspaper, published in Montreal on the day after I had been received by the Courts of Law, sitting in special session ?

“ Lord Shaw may, on his return to London,

make himself the echo of the sentiments of the inhabitants of the Province of Quebec in proclaiming our attachment to the British Crown and our insistence on all the rights and privileges that the Old Country has granted us. It is not Quebec that will stand in the way of the preservation of the Empire, of which he is so proud, and which he wishes to see more powerful, more solid, and more united."

That is the message. I pass it on. If Lord Durham had been alive he would, I think, have been glad to hear it.

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Thus far for your nations and your peoples, viewed objectively. But you may well ask me, seeing I went out on a legal mission, "Are we to have no word with you about the law, about our common profession, also viewed objectively, and with the stranger's friendly eye?" I have been thinking about that. It is a topic distinct and separate—so much so as to demand for itself a special place. I am venturing to reserve it for the letter which follows.

Au revoir,

S. OF D.

LETTER III. LAWYERS IN MUFTI

MY DEAR FRIENDS,

We had to separate at Vancouver: the great New York lawyer to his heavy briefs; the Lieutenant-Governor to Winnipeg, where he had to be left, deep in Manitoban affairs of state. But we shall go on travelling imaginatively together; or, better still, we shall light up, in a snuggerly apart, and we shall indulge our natural selves in noting the cross-lights of practice, in reviewing the ordinary work of a common profession and in renewing our oaths of fealty to its fundamental values.

I am putting down again here my humble contribution to the common stock of our interviews.

Indeed to omit in these letters any reference to the main object of my mission, to your Associations, and merely to leave in your hands the written addresses which follow, would be a graceless affectation. My dear Kinsmen of the Law, let me, for a beginning, speak about those great Societies over which you so worthily preside.

There was a service which Viscount Haldane rendered not only to the law but, as it turns out, to Imperial unity and to American friendship when, some six or seven years ago, he consented to address the Bar Association of Canada. The occasion was seized by the lawyers of America,

who went in very considerable numbers to Montreal; and this turned out to be the beginning of a sense of real solidarity between three peoples, the British, Canadian, and American, in one not unimportant region, namely, the region of jurisprudence.

Since that visit the American Bar Association and the Canadian Bar Association have worked most cordially together in their annual meetings, and in cherishing the same desire that some representative of the Motherland should come out and speak to them. The visits of Lord Finlay, Lord Cave, and Sir John Simon are deservedly well remembered.

Whether consciously or unconsciously, this feeling of solidarity reached a high point in the year 1922. The arrangement had been made for a far cry and for a special recognition of the West. Both meetings should take place on the Pacific shore; the American Bar would lead off on August 9 at San Francisco and the Canadian Bar on the 17th at Vancouver; powerful deputations from the one body should attend the annual meetings of the other. It was accordingly under the best of auspices that I crossed the Atlantic.

Was this the embryo—one cannot help wondering and even hoping—was this the embryo of a nobler and a wider union of the Anglo-Saxon race? Who knows?

As to the relations with the Old Country, in the year 1922, a memory of good-will was created by the visit to England of Mr. Taft, the Chief

Justice of the United States. The actual object of his visit was to study on the spot English legal procedure, and so to strengthen himself for the great work of American legal reform to which he has set his hand. But his visit was made the occasion of high and well-deserved courtesies rendered in his honour by the Inns of Court and the general body of lawyers in England. And there was better than all that, for, here, he was for us not the Chief Justice only, but a famous Ex-President of the United States, and one of the most powerful of living men in the advocacy of world-peace. And his voice and presence fitted the rôle: a messenger of good-will; good-will for his mission; good-will in his heart. So entirely loveable he was, that he made both countries, both worlds, say afresh "Let friendship flourish." Good old year, 1922.

Law Associations such as those of Canada and the United States are unique. One circumstance, that of physical distance, distinguishes them entirely, both in the need for them and in their usefulness, from anything in the United Kingdom. In England, for instance, things may be debated from Manchester and London. But the reports of the proceedings are English—that is to say, English as a whole, and what is said in one place need not be said in another, for the excellent press system has forestalled repetition. England, in short, is one province, or, if you care, one State. In America, and in Canada alike, distances of thousands of miles separate the members from

each other, and it is doubly well, in these circumstances, that the link of a common profession should be strengthened.

In another and a deeper sense the need for an American Bar Association is very strong. The laws of the different States are in many respects—some of them cutting to the very roots of social life—different. No body of men is more conscious of this than the distinguished lawyers of America. Citizens, particularly citizens who are well-to-do, move from State to State, and find themselves, strangely and suddenly, in entirely different circumstances with regard to crucial questions of everyday life. Regard must of course be paid to all State laws, but he would indeed be a clever expert who would attempt either to reconcile them or to say offhand what they are. Not only so; the laws of marriage, particularly the laws of divorce and the consequent laws affecting succession to property, may be wittingly or unwittingly the subject of change in half a day or half a night's journey.

The Law Association has wisely recognized that this is an unquestionable clog upon citizenship of the United States as a whole. Something in the direction of unification in legal concepts, and particularly in the jurisprudence which intimately affects the life of the citizen, is required. And the enlightenment of the American Law Association is nowhere more seen than in this—in the cautious but firm attempt to reach, I shall not say standardization, but something at

least like reasonable similarity in the law of the United States as an applied system.

This *raison d'être* does unquestionably also appear in regard to the Canadian Law Association, subject to the notable exception of the attachment, deeply rooted in history—of Quebec for the law of Rome and for the pre-revolutionary institutions of the Parliament of Paris. The provinces of Canada under the Dominion are as jealous (and rightly so) of their separate rights as are the States of the Union. But in the next place, the gathering together, south of the border and north of it, of leading men whose spheres have simply been individual and ordinary practice, but whose general good wishes for the progress of the law and a fair measure of its unification are unquestionable—these things have proved up to this time a singularly powerful aid to these associations. The men of one State or of one province see and hear the powerful men of distinction and sometimes of fame from others, and this gives a tone of command to the whole organization. No one could have listened to the masterly address of Mr. Severance, the distinguished retiring President, at San Francisco—so full of cogency, of constitutional learning and of sound and helpful thinking—without being convinced of this advantage.

The fact is that on that great Continent *international law*, which in England may be academically viewed, is there a most practical affair. Thomas Jefferson at least has that to his credit,

that his championship of State rights has necessitated a high plane of legal equipment for practitioners of light and leading. This note of scholarship was marked on both sides of the border. The paper at San Francisco of Principal Butler on Legal Education and that of Mr. Justice Anglin at Vancouver on the Place of Civil Law,—which still stands in active practice in the province of Quebec,—would have lifted any conference to a high level.

Now, do not think that, in what I am going to say, I am presuming to criticize systems which in their working differ in many practical details from those obtaining in the British Isles. There are without doubt three great outstanding differences worth noting and watching. Let me mention them.

(1) Your lawyers are both attorneys and barristers. In England barristers, and in Scotland advocates, stand as a class apart. The question of having a lawyer who is at once attorney and barrister was at one time much discussed in the Old Country and the example of the West was quoted. On the one side there was approval: on the other there was that reprobation which legal circles are always able at the shortest notice to pour in bucketfuls over the head of any invader of tradition.

The controversy is not dead. Whether it may be revived or not I cannot tell. Your practice and ours seem for the time being irrevocably fixed. Taking it so one cannot but observe this

curious thing about such controversies, namely, that at many turns one can see a *rapprochement* in practice and working towards the same fundamental idea. That fundamental idea is: there being in the affairs of life diversities of gifts and varieties of occasions, how best can the needs of particular occasions be met by the supply of particular gifts?

In England and Scotland no small share in many practising barristers' success is often ascribed to their early experience in an attorney or solicitor's office. This is a concession to solidarity. It takes another form in your practice. A diversity of talents so often clearly appears in the composition of a firm that one member of it seems to be fitted for the intricacies of conveyancing, another for the delicacies of private advice, while the third has notable gifts in the direction of open advocacy. This is a concession to particularity. I suppose your big firms may be constructed upon that very footing, so that in the end the controversy has become an academic affair. Professional life after all takes the groove of the professional talent, in spite of nominal conventions, and just because it suits the special occasions which produce the special demand.

I remember long years ago being much struck with a remark of Carlyle's (will someone find me that passage?) in which he dealt with three heroes of the French Revolution. "One," said he (to put it in non-sulphurous English) "one

the thinker; another the actor; the third the speaker." In Great Britain the speaker has to put on a wig and not to have an ordinary office, and to be approached, oddly enough, as a superior being. He has, of course, to be a thinker, and in some respects a man of affairs as well. These add to the advocate's power. But the wig conceals all that; and he gets paid in a different way: and quite a crop of peculiar customs become like his habitual shrines.

In other spheres of life you see the same conflict—say between the specialist and the general store. One may value the experience and practice and skill you get from the specialist so highly as to think him indispensable, or in the hurly-burly of life you may find all you want in the general store. I gather that Americans and Canadians rather like the general store? The ordinary man of the world does not quite understand the specialising which means that one set of lawyers instructs another set of lawyers. But the specialising has a magnificent history, has proved its high quality for centuries. Of this I am convinced.

(2) Then again, here is a thing which perhaps is more discussed at lawyers' firesides than at their public meetings, namely: what kind of living men make out of the law in these respective countries. Scotland has for centuries had, as the common law of the land, a system derived from the law of Rome. Under the latter, the *pactum de quota litis* was condemned and con-

demned out and out. The greatest of institutional writers, Lord Stair, puts the law and the reason for it in the simplest of language. He wrote as far back as the Revolution Settlement, but the law as he wrote it is the law of Scotland to-day. "But," says he, "*pactum de quota litis*, whether it be a naked paction or promise or a mutual contract, is rejected both by the civil law and our custom; whereby advocates, in place of their honorary, take a share of the profits of the plea, which is to prevent the stirring up and too much eagerness in pleas, and was extended to an agent or writer if he had made such a paction before or during the plea."

This is the foundation both of the Scotch and the Roman system. Preventing "the stirring up and too much eagerness in pleas" is a moderate way of stating what to a poor nation is, and possibly requires to be, a rigorous adhesion to the view that a plea is to be argued, for and against, on legal and professional grounds, and that there is danger in giving the lawyer a private pecuniary interest in the results to his client of his professional exertions. This rule is for us a good rule; it prevents the indecency of scrimmage for what is known as "a share of the swag"; and anyhow it is as plain as a pikestaff.

In England they come to very much the same thing with the help of references to statutes, decisions and so on, and British law is pretty solid on the principle. The curious point is that in a young country one would have expected that

that is just one of those things which would have been eagerly followed, having in view the difficulties of the infusion of a professional spirit, and the commanding necessities of scrupulosity in the administration of justice.

But there is no need to use any wondering language about it. The American rule is different. The *pactum de quota litis* is permitted. I am aware that it is the exception, rather than the general rule, that it may be said to occur only in special lines of business such as tax and tariff cases, accident cases, or claims to estates. And I am aware that the practice is closely and judicially watched in order to prevent its being abused. But the fact remains that the practice is permitted, and permitted, as one sees from the Law Reports, even to the height of 50 per cent.

In such cases a lawyer disposes of his services as freely, with regard to commission or any agreed on form of reward, as a commercial agent does in selling or shipping goods. He maintains his right to bring this service within the range of private contract, and if he arranges with his client upon an honest and open bargain that he, in the case of success by his client, will share the profits of the plea, that bargain is supported by law.

The amounts at stake are sometimes very considerable: the shares stipulated for by the lawyer for himself in the event of success may amount to a large percentage; and in the upper ranges of the law a stipulation for a fixed fee in

any event but in the event of success for proportions or percentages which run into six figures or even seven figures of dollars is, the latter an occasional, and the former a not uncommon, occurrence. I have to take the facts as I find them, namely, that on all hands the practice is perfectly open and above board, a plain and simple matter of bargaining; and, secondly, that the result has been probably a wealthier profession, but a no less powerful and, so far as my limited experience went, no less high-minded profession, than on this side of the Atlantic.

Make of it what you will. Contrast the two systems. What a splendid series of theses for debating societies! The underlying foundation of all is and must be character, and in America they do without those preventives against the distortion of justice for personal ends which are at the very fountain-head of jurisprudence as a Britisher conceives them. You see how careful I am in giving no opinion of my own. The reason is very simple. My experience is not wide enough to permit me to pronounce one; and I am too old a bird to be caught by the *a priori* method.

(3) Then when one is setting down these notable bits of contrast between the law with you and the law with ourselves, may one mention what in Britain is the ticklish and sometimes terrible subject of costs? It was one of the stock jokes of a learned and powerful Scotch Judge that when the question of costs came up,

"Ah," said he, "now we come to the merits of the case!"

In Britain costs follow the event. An unsuccessful suitor has to pay not only his own bill but the bill of his opponent as that bill is assessed by an officer of the Court—that is to say, as the bill is audited, with all fancy and unnecessary items struck off. In America there are no costs except the relatively trifling items of Court charges. The speculative tout is always with us, and the British system is open to abuse by the tout who is mainly looking out for fees. Cases may be raised without substance in justice and merely in the hope that in the rough-and-tumble of procedure the tout's bill of costs may have to be footed by the opposing and generally wealthy client. Touts do not sue the poor.

But human nature is the same on both sides of the Atlantic. One knows the kind of case that I refer to, in all the three countries. Infirmary doors are watched for poor people who have sustained accidents: the relatives of the dead are visited with the offer of advice to litigate free. In Britain the chance of such adviser is in his bill, arranged for or taxed; in America, there being no costs awarded, the case seems rather worse, if anything, than better, because under the American law the payment may be made out of the share of the estate recovered, or even, alas! out of the compensation awarded for death or injury. Again, would not this be a fine case for the debating societies?

The professional men that I have referred to are not very respectfully named as I heard it: they were called "ambulance chasers!" But it is useless to talk in a superior fashion and use language of round abuse, for amongst these very men (many quite decent men and all acting within the law), and in that very class of case, one has always to remember that there are not a few occasions when "the poor that have no helper" would be left in misery without their aid. The sufferers may even have been victimized by those responsible for their calamity and induced to "compromise" by the astute flaunting of dollar bills. And the very fact that law, however it be stirred up, will justify itself in getting to grips with the true merits of a case, has its reasonable influence in curbing the powerful as against the weak, in equally distributing justice and in vindicating right.

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I write as an observer, and you will have marked how reluctant I am to intrude opinions even while noting contrasts. But frankness demands that I should now make so free as to testify with a more resolute note, on one particular subject, of the most serious gravity. I refer to the status and tenure of the American judiciary. I am not alluding to the Federal judges, nor even to the case of great single States which have on the points of status and tenure lifted their State judges to the federal level. That level is that the judges are appointed *ad*

vitum aut culpam. But throughout the rest of the United States of America that level is not reached: the judiciary is elective.

This is a deep and fundamental affair. It is not a question of the individual—not at all—but of the system itself. And the system cannot surely be approved which permits insecurity to put independence under peril. Nowhere in the whole range of public life and action are independence and security so interdependent and more valuable to the people and the State. And it is no phantom security that is demanded, but a security real and calm, and a veritable bulwark—security against political storm and tide, security against popular clamour, security against class pressure, security against Government itself, and against every department of it. That, and nothing lower than that, is the true level which the highest civilization and the spirit alike of equality, of justice and of true freedom claim.

Two things brought the subject vividly under my notice. One was a conversation with a painstaking and distinguished judge occupying a very high position in a Western State. His term of appointment—but a few years—was drawing to a close. Political parties were closing round him: political programmes and lists of nominees were being framed. Honestly, I could see, and I could very well understand that the prospect of having his name enrolled as a candidate for electoral suffrage and his merits or demerits canvassed as a party man plus a dispenser

of justice—all this he viewed with a kind of sad disgust. Why should he undergo that ordeal in which judicial conduct is flung into the political or party arena? To a man like him only one thought springs to the mind when judicial conduct is under discussion, namely, that knowledge and accomplishment are as nothing unless they are controlled, inspired, and in every act and habit directed by fearless rectitude. Let him be spared the humbling suggestion that he had an eye on the electorate or the ballot and so was deflected to popular justice, if that differed, even by a hairsbreadth, from true justice.

I may have plumbed too deeply into his disrelish when he modestly described the situation: but I hardly think so. He loved his work, had adorned his position, and was still in the prime of life. But a candidate with attractive gifts and party claims was coming into the field. Should he not retire again to private professional life, and leave the judicial field to others of a more metallic mould? That was how I read his thoughts.

Then when I reached another State, namely, Oregon, another reminder of the same problem struck me like a blow. I was handed a huge yellow placard and I saw the system at work. A caucus placard, inviting the party support to party candidates. Among these, in one county of this State, the electors were invited on this sheet of the "Official Ballot" to support—here are the staggering instructions: STATE: *For Justice of*

the Supreme Court: VOTE FOR FOUR. Then followed twelve names with their respective party colours. Four are "Republican-Progressive," one is "Prohibition," one is "Democratic-Prohibition," three are "Democratic," three are "Socialist."

I do not go through this wonderful sheet further. It contains the names of nominees for the office of Attorney-General, of a Judge of the Circuit Court, of County Sheriff, of the Judges of several District Courts, and last but not least of one Constable. But to each case the party label is attached and the fortunate voter is assured beforehand by the caucus that he can safely help to fill the seat of judgment with a good party man. Shade of Thomas Jefferson—did your championship of liberty and the rights of the people really mean all this? Great is jurisprudence, great is justice, but how much greater is "Republican-Progressive" Justice, "Democratic" Justice, "Socialist" Justice and, at the very top and triumph of freedom, "Democratic-Prohibition" Justice!

Lest I should appear to be condemning something, I say no more on the subject. But there are two consolations. First, I sampled the survivors of the ordeal, and I declare to you that, in view of all that the system must mean to individual lives and careers, character—reinforced by public opinion and supported by the approving comradeship of your great Law Societies—has preserved the personnel of the judiciary and is

heading it steadily to a high position in public respect.

Consolation number two has also to do with your Associations: for, instances have been given to me in which these great societies have risen above party control to speak and act with power in defence of legal and judicial ability, and in the lifting of the claims of law and justice out of the grip of political management. The future lies with these ideas.

If I were asked to say in a sentence what I think will bring a benediction in this sphere to American and Canadian society, I should humbly answer: (1) throughout both countries double every judge's salary—that from the highest to the lowest. And (2) to America I would commend the security and independence of the judiciary as the worthiest of all tributes to her greatness and her dignity.

Of all men, you to whom I address this letter know that I love your great nations, and have some knowledge of the historical reasons which may seem to have retarded or deflected certain lines of constitutional progress. Forgive me if even in my love and admiration I have ventured to print the view of what I should reckon would be a happier time: "Faithful are the wounds of a friend."

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From New York to Los Angeles, from Los Angeles through San Francisco to Vancouver,

and from Vancouver to Montreal: in all that vast enclosure what a unity of professional idea I observed! I wish to acknowledge with no feigned gratitude the spirit of brotherhood, of respect—I had almost said the sincere tokens of attachment—which surrounded me on every side; and I will conclude this letter to you by referring to one illustrative incident at Montreal.

At Vancouver, as you will see if you glance again at the address delivered there, I had dealt with the varieties of law administered in the Judicial Committee of the Privy Council, and I had made particular allusion to those parts of the British Empire within which the civil law has still a present, a noble and an honoured place. Whether it was that this reference had hit the mind of Quebec, or whether the judges and practitioners that came west to Vancouver had something to do with it, I do not know, but what happened was this:

The Winter Sessions of the year 1922 were to commence upon September 11. When it was learned, however, that I was to embark at Montreal on the evening of the 8th, the Bench and Bar of Quebec came to an arrangement under which the opening of the Sessions was proponed by three days in order on the 8th to welcome me and to show to me their inaugural ceremonies, including that interesting element of theirs, the admission of young Intrants to the Bar. Bench and Bar alike voluntarily shortened their Long Vacation! I do not know that any legal in-

stitution anywhere ever topped this, the high-water-mark of courtesy.

In my tour I had frequently remembered the saying of Lowell in one of his prefaces to the *Biglow Papers* that the faculties of speech and speech-making are essentially diverse. "By the one," says he, "you make yourself intelligible and by the other unintelligible to your fellow-beings." Pilgrims, City Clubs, Country Clubs, American Clubs, Canadian Clubs, Corporations, Law Societies—all these had had to be addressed. Lowell's saying would have come in handy. I risked it once, but it was not relished. The reason was simply this, namely, that speech-making is one of the greatest of American institutions. The machinery of celebrations requires it, a creak or two notwithstanding: but you would as little mention the creak as allude to the top notes of the Star-Spangled Banner.

All the same, the more you have of the article of speech-making, the more you feel that Lowell had some notion of its quality. Had I then at the Montreal stage reached the limit, the last stage of unintelligibility?

Fine addresses were delivered by the Bâtonnier and the Lord Chief Justice, in which eloquent and touching references were made to the occasion, then followed a forceful and cultured address by an eloquent judge to the Intrants of the Bar. Far be it from me to recount or resume my own observations.

Except this. I referred to a visit paid to Rome some years ago and to the kindness shown by the judges of one of the greatest of Italian Courts. I was led to the topic by the natural association of ideas. And one reference I made, which, as it touches the very heart of our intercourse on the fundamentals of professional faith, I will here venture to repeat, as I make you my farewell.

I referred to a visit to the new Palace of Justice built in the Valley of the Tiber, from the lofty chamber windows of which Soracte gleamed out white in the January snow; but it was not that nor the Horatian reference which struck the mind. It was the sight of two monumental figures on either side of the portal. On the one hand stood Cicero; on the other Papinian—a stroke of genius in the choice of representative men. These figures represent on the one side advocacy and on the other profound and noble jurisprudence; together, the very glory of the law of Rome. On Papinian I particularly dwelt as he appeared to me to stand in one person for great scholarship, great juristic power and great public service. The tradition of such a man should be an inspiration to every lawyer.

I thought afterwards that my humble eulogy had gone too far; but it was not so. My subsequent research has more, far more, than justified the citation of that high example.

The late Dr. Roby was a friend and colleague of my own in Parliament, and surely one of the

most erudite men who ever sat in the House of Commons. In his Introduction to *Justinian's Institutes* he quotes with manifest approval the verdicts of Cujas and Puchta on Papinian. Cujas, he says, calls Papinian "the greatest lawyer that has been or will be; he occupies the same single pre-eminence amongst juriconsults that Homer does among poets." An *éloge* of a lawyer as unique as ever was penned.

The story of the closing act of Papinian's life revealed at once the splendour of his character and of his homage to the virtues of his profession. Will you forgive me if I cite to you a passage from Gibbon in which the great historian seems to uplift himself in the delineation of such a life and mind? He shows how the dying Emperor Severus had, as it were, a vision of the danger to the Empire about to pass from him to his two sons Caracalla and Geta,—a vision of the breach at once of family honour and of moral and Imperial duty by a jealousy which would reach to fratricide. He summoned his Minister Papinian to his side. He urged him to compose the differences between his sons, to avert the ruin of the Empire by reconciliation. Severus died. But Papinian's was an impossible task. Geta was infamously slain. Caracalla had contrived the murder. Then Caracalla turned to Papinian to defend the assassination by a set accusation of the victim. The jurist's probity revolted: he refused the Imperial tyrant's command, and he paid for his refusal with his life. But Gibbon

must tell the transaction in his own words: "‘That it was easier to commit than to justify a parricide’ was the glorious reply of Papinian, who did not hesitate between the loss of life and that of honour. Such intrepid virtue, which had escaped pure and unsullied from the intrigues of Courts, the habits of business, and the arts of his profession, reflects more lustre on the memory of Papinian than all his great employments, his numerous writings, and the superior reputation as a lawyer which he has preserved through every age of the Roman jurisprudence."

I have left to the last the citation of Puchta's eulogy. For he has unfolded psychologically the true secrets of Papinian's greatness. In Roby's words: "Puchta justifies the admiration of ages for Papinian by his long political services, his high office, his greatness as practical jurist and writer, in which last respect few can be compared with him, and above all"—and then follow these striking and memorable words—"above all, by the integrity of his character and the moral force which gave nobility to the whole of an active life and made him the model of a true jurist."

Yes, my dear Kinsmen, you in your own persons represent not only a great profession but the alliance that such a profession is called upon in the history of all civilized nations to make with the administration of public affairs. In America, in Canada, in France, in our Old Country itself, the law, with the rigours of its training and the introduction of the mind into the administration

of applied justice, contains over and over again examples of the choice of the public good in preference to private advantage. But whether in the profession or in public life the foundations of all are the same—justice administered to all, and justice, that is, integrity, in the heart. If in these addresses that follow in this volume you see again the delineation of a wider range of law than that of ordinary practice, and a wider use of Empire than aggrandisement, you may know that we think together on both sides of the Atlantic; that, high as it may reach, ours is a sacred calling. Fare you well, my dear Kinsmen, Companions and Friends,

SHAW OF DUNFERMLINE.

ADDRESS I :

*Delivered at San Francisco on August 9, 1922,
to the American Bar Association :*

THE WIDENING RANGE OF LAW.

I DEEPLY feel the honour of your invitation. And I sincerely recognize the hearty cordiality of your welcome. This great audience; the eminence of the men whom I see around me; the resonant call of professional brotherhood; the deep respect for the law which inevitably accompanies the progress of the Anglo-Saxon race; the unifying, harmonizing note which the law thus adds to the associations of history and literature and blood,—all that kind and rank of ideas come tramping through the mind at such a meeting as this.

Americans speak in terms of space, with a frank and honest pride in the glories of their breadth of continent. Englishmen speak in terms of time, with an august devotion to a mighty history. But it is left to the Scotchman to overleap both space and time in the terms of human brotherhood. What matters it to him “though seas between us braid hae rowed”? What is it to him, the ancient grudge of four generations? He has come and thriven with you and helped to live that down. The large vision seems not unnatural to him, looking before and after. He knows about the clan feuds,

sometimes serious and sometimes silly, and he has outlived them all. The lion can lie down with the lamb, even the Campbell with the McGregor. If I could presume or dare to represent even for a few brief moments the land that bore me, I should say as my first word to you to-day: "Again and for ever we are trusty friends. We can brace ourselves for the future which is coming, by taking, in any beverage which is according to law, a cup of kindness yet."

By invitation, addressed to me in terms of grace and courtesy similar to those of your own, I address next week the friends of the Canadian Bar Association, at Vancouver. The brotherhood in law of this vast North American Continent has gathered at the shores of the Pacific at one of the greatest conjunctures of human history. Was this an accident or by design? Anyhow, the event has a singular, a unique interest. My reflections upon it and upon its happenings in 1922, have led me into a train of ideas, the brief exposition of which may, I trust, not be unacceptable to this gathering of thoughtful men. Do not ask me to ticket them by a name. The philosopher or jurist would hanker after some such title as "The Widening Power of Jural Conceptions." Plain people like ourselves would simply call it "The Widening Range of Law."

Stand aloof for a little and watch that moving, jostling, elbowing, combatant crowd which we call civilization. There is a figure there that is bigger, more upstanding, more commanding

than on your last survey. More and more he seems to control the crowd, suppressing confusion, regulating traffic, making the rough places plain and every place safe : and his hand is swift and heavy on crime and on the sneak, and tender and helpful to the weak and the struggling and the oppressed. His name is Law. When he gets into his working garb we call him Jurisprudence. For Jurisprudence is just law with a gown on. And if it is, as it should be, a roomy gown, it neither chills his heart nor impedes his growth.

More and more, as you are seeing with your eyes, that noble, honest figure is becoming a leader and commander to peoples, classes, states and nations, whose combined movements, as I say, are civilization itself. And more and more he is getting wisdom, more understanding and heart.

But, by the Widening Range of Law, I mean not merely that deeper invasion into the secrets, the motives, the regulative ideas which govern the relations of men, but also that objective side in which law is conquering wider fields, vindicating its functions, not among individual citizens alone, but also among great ranks and classes of society, and even moulding the policies of states and commonwealths, and among them all and everywhere placing reason against passion and right against power.

At this hour, after the Great War, even as the smoke and horror and the smell of blood clear

away, law resumes its sway, planting anew in a bruised and bewildered world the standards of legality human and divine. Good are treatises, better are treaties ; but the world is a disillusioned world and it has grown tired of them. It longs for facts, some solid ground on which the law can have its chance unless good faith be banished from the earth. Something accomplished, something done, something well and truly laid, something more than diplomatic gestures or a paper pledge ; that is what is required. The nations have lost confidence in each other.

In ancient Rome the first obvious contracts were real contracts ; the consensual came later. As the majesty of law extended, the consensual contracts became common because behind them there lay the power not only of interpretation but of enforcement. Believe me, until the majesty of the law is established with similar powers of interpretation and enforcement among the nations, the nations must begin again, they must tread the historical road, they must have real contracts, actual accomplishments, things done and things given up on both sides, before men will believe that true progress has been resumed. It is for this reason, gentlemen, that I reckon the Conference of Washington to have been greater than a conference, and the Five-Power Naval Agreement and the Four-Power Pact for the Pacific Ocean, the one with its real, instant, and definite limitation of armaments, the other turning possibly this great ocean into a vast Pacific

reserve—I reckon these things to be a sensible mitigation of the fears of humanity, a sensible contribution to the peace and progress of mankind.

So reckoning, we heartily bear in mind the services and achievements of America in the world cause, and the firm and practical statesmanship of its President and Secretary of State. Especially to-day do we think of the great lawyers of your and many nations, as they went on trying to hammer into a solid fabric of results those ideals and aspirations which all peoples cherish who claim the rank of civilized States.

These are some of the reasons, Mr. President, which make me feel, with a deeper note of gratitude, the historical interest of the occasion on which you have asked me to address you.

Of course, when lawyers foregather, they are apt to confine their discussion to the present, and to the immediate future, and to their own very wide-awake good selves. But the strength of these great conferences is shown when they have leverage enough to get men out of that rut.

Occasions arise when history and events vividly and savagely compel that. The best amongst you probably look back to the later fifties and the early sixties—that trying ordeal for your citizenship. Then it was that the law of status and the law of the Constitution had to be coordinated, and that under the higher planes of liberty and the rights of man. Lowell puts the old view which the older legality could always

defend. "Here I stand on the Constitution, by thunder":

"Human rights hai'nt no more
Right to come on this floor
No more'n the man in the moon,' sez he."

These were defensible, very defensible, propositions in the mouth of a mere lawyer, a mere constitutionalist, a mere politician: and Lincoln was very patient with them. But when to yield to them would have been to rive in twain the American Commonwealth, then his heart, always true, cleared his vision, and he seemed to reason that man was more than constitutions, that the law was made for man, not man for the law. So it was that the courage and essential goodness of his statesmanship, and the loyalty of your great people to truth, consolidated at one stroke the cause of the union and of human freedom.

Thus in the common and everyday relations of man with man (and these demand after all our first regard), the range of your law became mightily extended. That law of status—if law it could be called which had travestied the patriarchal system and would have turned back even the course of Roman jurisprudence when it went on opening more and more widely the doors of its citizenship—that law of status disappeared and the law of contract took its place over the wide areas of many States. The precedent—very nobly conceived and very wisely accomplished by England in the enfranchisement of the West Indian slaves—was of but slender proportions;

and it compares with your struggle literally as an insular with a continental achievement. Hard and difficult and many as were the legal problems to be solved, I declare to you that it fills me with wonder to reflect upon the comparative ease of the transition from status to contract in your case, upon the adaptability of your legal machinery, and upon the practicality of your people.

This on the civil side ; but on the criminal side your task was greater still, and it is not yet complete. Race, colour, the memory of oppression ; these are very real things to be suddenly let loose in a citizenship of freedom. They leave the lawyer and the reasoning citizen an irksome but a high and responsible duty. And to this hour a high and responsible duty it remains. That duty is to save liberty and order alike by the equal hand and the noble and resolute bearing of justice itself, which are shown by respect and true fealty to the regular administration of the law. Every man his own avenger ! the sudden ferocities of lynch law ! Wherever the English tongue is spoken the ground is too sacred for that ; wherever free men reason together, jurisprudence renders to justice a sincerer and more stately homage.

A lesser, but yet quite notable extension of the range of law has occurred in the emancipation of women. I presume that you have, as we have, Married Women's Property Acts with their sequels social and legal. The case, however, is

not here the same as with the enfranchisement of the slave: it is not the substitution of the law of contract for the law of status; it is their reconciliation with each other. I daresay you find the contract side of it not unmanageable: but—on the status side—how you get along with the variety of state law and state legislation on the subject, say, of divorce, and still keep your heads, and are able to attend to business—this fills me with wonder.

I know how difficult it is to harmonize state laws. England has been trying for a generation to approximate to the decent, sensible, easily working law of Scotland in this department of the matrimonial relations, and as yet it has failed. Of all the forms of *amour*, the one which is most ridiculously hard to accommodate is *amour propre*. This is certainly so among states and nations; and legal reform which points to homogeneity is of the derided and suspect!

Meantime, the range of your laws for all professional brethren who practise and advise must be immensely increased by home-made difficulties. And these, I should reckon, bring in their train a goodly store of troubles in the regions of domicile and succession. Is the harmonizing of your laws of status a vain dream for the United States, an objectionable or impracticable ideal? Pray forgive me: I do not mean to intrude, or even to suggest. But you must take me as I was made and I cannot help thinking.

A few brief words only, and those of nought but commendation of your law of contract. In your case it was not, as in the jurisprudence of Rome or of England, an evolution from a rigidity which had grown barren to a fruitful flexibility which better met the needs of man—a slow, centuries-long education and adaptation. Your jurisprudence sprang fully armed like Minerva from the head of Jupiter. Rather a strained figure that! For I was meaning Jupiter to represent the common law of England, and therefore I was referring to Jupiter at the time he led a decent life—say, after he had overthrown Saturn and before his flirtations began! In this department of jurisprudence, the law of contract, your services have been very real and in its literature almost monumental. The labours of Story lift your representation to a great height. And when that gifted, brilliant American, statesman and lawyer, Mr. Benjamin, landed on the English shore, we received with no grudging admiration his work on *Sale*; and the man who wrote it ranked with our hearty good-will among our highest in the law.

I venture to accentuate this solidarity between England and America on Contract Law. In your case its principles inform and regulate over a vast and active continent stretching from ocean to ocean. In our case they interlace the world.

Naturally, the same principles are found, and possibly even better co-ordinated, in other lands—say, in France under the Code Napoléon:

naturally they are derivative from ancient systems: historically they may be said to have found luminous exposition by the immortal jurists of the age of the Antonines, who subtly threaded their way through technicalities to the open air of fair dealing. A claim of monopoly would be absurd; we do not set ourselves up as the first and true inventors. But it is ours to acknowledge and to share, and over vast spaces of the earth to distribute, a priceless inheritance which has helped to dissipate the misunderstandings, to smooth the intercourse and to increase the comforts of mankind.

It is the fact of this common inheritance which lays a special obligation upon the lawyers of the Anglo-Saxon race. Between them, the United States and the British Empire largely share the distribution of the resources of the earth and the manufacture of those resources for the use of man. Take the old Roman classification, if you like, say, of the consensual contracts: Sale (*Emptio-venditio*); Agency (*Mandatum*); Hiring (*Locatio-conductio*); and Partnership (*Societas*). How embracive the category is! But did ever the wildest dreamer among the absolutists of the ancient world conceive of the vast fertility of illustration of the items of the list which a new world displays? For the *Emptio-venditio* go to your emporia, your bourses, your exchanges. For *Societas*, watch your great Corporations,—so powerful as to threaten to dominate legislatures and states. For *Locatio-conductio*, see your net-

works of railways, your shipping enterprises, your transport linking ocean with ocean. For *Mandatum*, your drummers drumming everywhere, by land and sea.

Greater than dreams have your enterprises spread; but, spread they ever so far, one thing accompanies them, inexorably, inevitably, as shadow follows substance. With them all goes the law. It checks misdeeds, ensures equality of appeal, removes crookedness and chicane, respects neither rank nor power as between the bargainers, ever and everywhere insisting on a square deal; ever and everywhere taking its stand on principles whose foundations are truth and whose corner-stone is honesty.

See how glorious your profession is! See how mistaken those are who think it outgrown or effete! I have a respect for theology; but its timidities and some of its ongoings, in times which demanded plain and frequent ethical reminders, have made me not so sure about it. Anyhow, I am venturing in your presence the proposition that in this age—which so often shows itself a brazenly material age—it is the profession of the law that is the unquestionable instrument of an appeal, not to technique, not to vogue or fashion or mere correctitude, but in the ultimate resort to ethical standards which no age can outlive and no progress can trample underfoot.

I am not a professor, nor the son of a professor, and I claim no title to inflict upon you an address enumerating categories or laying out elaborate

parallels. I have not learning enough to speak to learned men didactically; but one cannot have lived through a long and varied professional life without certain things having stood out, as able to stand the test of experience, as very real and helpful things. My only wish is to speak to you to-day more by way of simply contributing to the common stock of ideas which we put into our mutual exchange. Therefore I do not presume to dwell much further on the Law of Contract or to pass definitely to propositions on other definite sections of the law. Let us simply go on thinking together.

It does strike me, for instance, that apropos not of contract alone, but of many other branches of the law, there is a twofold development which, having an historical origin, is very notable and very wholesome in our own time. The age has gone by for symbolical and ceremonial procedure which has lost its usefulness and meaning. In regard to the sale of real estate what changes have occurred even in my time! As a boy, I have copied out deeds which have narrated with precise notarial detail how seisin was given—actually given—for lands, by handing over earth and stone; for mills, by the giving of clap and happer; for houses, by hasp and staple; for fishings, a net; for annual rents, a penny,—each tangible thing sold having its tangible sample and symbol which made visible the entry of a new owner and possessor. The appeal to the sense was plain: the notary certifying “*vidi*,

scivi, et andivi,” with lots of other Latin added—of a raw and canine order.

Nowadays, the substance of sale remains, but the symbolism of the real contract has passed away. The literal contract has been reached, and all stands alone upon the written word. Now turn this matter about. From the real contracts where more than the written word was required, look now at the purely consensual contracts which required no writing at all.

The means for the transmission and record of thought have vastly changed from the day when the Roman painfully recorded the literal contract with his stilus on a tablet of wax. Then, consensual contracts stood a great way apart from literal. But now, with the spread of education and the advance of science, the use of letter, of telegram and of the telephone message confirmed by the business man’s note—all these lift the bulk of the consensual contracts into the grip of a literal record, and that so effectively that one may explain the record if it be ambiguous; but, if not, one must stand to it, and to vary it is bad law.

From these two directions accordingly—the one where all was form and ceremony, the other where there was the spoken word alone—the force of the legal pressure of later days has been concentrated upon the construction and interpretation of the written word. This is so in a sense applicable far beyond the range of individual bargains and covering not them alone

but writings of all kinds—wills and settlements, deeds of gift, and trusts ; higher still, articles of association and prospectuses ; higher still, legislative acts and statutes themselves ; and then still higher the constitutions of states and provinces, of dominions and commonwealths.

There thus come into the literature of law powerful and profound books, and a wealth of cases so perplexing as, if yielded to, would drive analysis to the point of contortion and the lawyer or student to confusion and sheer mystification of mind. But, as the range of law widens, then the clash of interests and the intrusion of prejudices social and national and international, are, on a sinister scale, apt to disturb fair judgment. All this makes a grounding in the principles of true interpretation imperative, as a salvation from sheer mischance. Of such a nature were the problems which confronted the greatest of American jurists, John Marshall ; and his masterly solutions lifted the office of Chief Justice of the United States high among the great places of the earth, and linked it for ever with his name.

When you consider what the handling of these problems means in the equipment of the human mind, then you get some light on the phenomenon that in all ages and in nearly every country the profession of the law gives its quota of power to statesmanship and public life. Exposition is the skill of the lawyer ; enforcement is his art ; but interpretation is the foundation of his science.

To get at the essential meaning which the

words under construction signify is a psychological exercise far too little appreciated. It is in modern as in ancient times : there are serious obstacles to getting at the true interpretation of disputed words. In ancient times the obstacle was formality : in modern times it is authority. A consensus *ad idem* did not of old get into the region of discussion until a minute examination had been made into the forms and ceremonies in which it had been clothed. Did these fail, as the law prescribed, then the examination, the true interpretation, ended before it had begun. These have now largely disappeared from the ground.

But in their place, and now for generations in their place, has grown up a new obstacle, thick as the jungle. The words have already been in the hands of the judicial commentators ; and as is the way with commentators, the one refers to the other, and the third to the preceding two, till the text is obscured, and the vision of the interpreter cannot get through the thicket except at the risk of his being considered a rebel and iconoclast.

Any recent statute forms an illustration ready to hand. Hardly is it born into the world, till judges fall upon it, tearing it analytically to pieces ; and unless they called it at least inartistic they would not be in the fashion ! But then their turn comes ; and their frequent lines of error are produced and produced with a touching deference, till by and by the plain English of the

act does not know itself; and only great judges take the liberty to announce that the act means what it says.

The danger of obscuring the text by the commentaries is not confined to statutes of the realm. It appears over and over gain in humbler and more homely spheres. Particular words of a will in a certain context are interpreted to mean one thing and it is so decided; then the same words in quite a different context are held to mean the same thing, because it has been so decided. Thus so-called rules of constructions are formed—the rule in this case or the other—and they are applied, amidst difficulties which no well-instructed practitioner dare avoid, although he and everyone else knows that the meaning put upon words is very different from what it would have been if the ground had only been clear.

I have observed with no little satisfaction, in recent years, a more determined effort towards reversion to the text itself, and a desire to avoid shackling the ordinary English language with conventional formulæ. A convenient illustration of what I mean occurred no later than last year in the case of *Lucas Tooth*. It appeared that the ordinary expression, the simple word “then,” had been the subject of repeated decisions and so had been given a cast-iron and conventional turn. One noble Lord thus stated the tendency upon which I have been venturing to reflect :

“When a category or enumeration, ventured

upon even by high authority, is sought to be imposed upon a simple and common word of the English language, courts of interpretation must preserve their freedom of contact with the mind and meaning to be interpreted, that mind having used the medium of unartificial and ordinary speech.

“Words themselves change in meaning; even punctuation, or the order in which things are set down, may have its significance; and the nuances of expression have an infinite variety. Out of the categories or generalizations you may no doubt construct a machine which would stamp ordinary words with a meaning which their author would promptly disavow. The generalization becomes a category, the category becomes a rule, and the rule becomes a bed of Procrustes upon which words and expressions must be stretched, but which, as one is unhappily conscious, they can only be made to match by torture or by mutilation. The meaning of the testator is not thus reached, and misinterpretation results.”

The case of Procrustes occurs often enough. The literalist, very loyal to authority, stands within it as within a fortification. If you tell him that “the letter killeth, but the spirit giveth life,” he asks you for the reference; and then, when you give it, he says that he has not got the book in his library. Yet must it not be true that wherever that spirit has been violated, then it stands to reason that some element of mischance may have crept in? Alas! in this world the

smooth has to be taken with the rough, and literalism with its mischances has the merit at least of binding judges and interpreters to construe the actual terms employed, without daring to invent for themselves another meaning not out of the grantor's words but out of their own head.

I grant that point; but when that is granted all has been said in favour of the Procrustes method. What then, gentlemen of the Bar—what is to be done? Struggle and wrestle you must with these difficulties, sometimes on an immense scale. Take my advice; the figure in mythology which will help you most is not Procrustes the tyrant of the iron measure, but a giant and a struggler like yourselves, by name Antæus. According to tradition he was a great fighter. He overcame and subdued all enemies, but the secret of his power was that this son of Neptune and Terra kept his feet in touch with mother earth and he thus found, at every crisis of battle, refreshment and new life. Finally he was overthrown; but Hercules could not have accomplished the task except by lifting him from the earth and squeezing him to death in the air.

There is our lesson as interpreting, constructive lawyers. Let us keep in touch with mother earth. Do not let any Hercules of convention lift us from that ground of common sense to which we owe all that strengthening, all that reinvigoration, all that vitality which nerves us in the struggle. So surely as we shall be lifted

above the realities of the case, then so surely shall we be overcome. Stand squarely on the solid ground of mother earth; even in the struggle where many authorities are heaved at you and many rules, and the wisdom of many ancients are fired at you to blow you into the air, stand firm, and you will grapple with all these assailants and all their weapons. In the end you will triumph by the strength of vision which has enabled you to see beneath decided cases their true essential meaning, and to test authority even in its highest decisions, not by head notes or rubrics, but by the fundamental principles rooted in reason and grounded in sense—which in the particular case they purported to expound.

Yes, there have always been, and to this hour there are, two schools in jurisprudence; the school of Procrustes, and the school of Antæus. I suppose the tyrant Procrustes had his uses—although I have never had much favour for him. But Antæus guides the whole life. The lesson of his strengthening contact with reality is a lesson for ever.

This determined loyalty to sense and truth never degrades but always adorns the law. This it is which is the death of trickery, which is the searching out and the stamping underfoot of fraud, which is the unravelling of the dexterities of deceit, which is the homage to justice which underlies every act of a professional man. In this enterprise of searching for truth, no greater advances have been made, probably in any age,

than in our own time. Men remember the standards of interpretation which are solid and infallible, and they conclude that any resort reached even by the most casuistical interpretation which varies these standards inevitably leads to loss and misery and wrong.

Upon this topic, one department of law to which I specially refer is that in regard to the rescission of contracts. In Scotland it is called a reduction; and until a few years ago it was expressed in an emphatic redundancy worthy of the Schoolmen of the Middle Ages. The will, or testament, a contract, a gift, or what not, was to be "reduced, retreated, rescinded, cassed, annulled, decerned and declared to have been from the beginning, to be now, and in all time coming of no avail, force or effect in judgment or outwith the same and the defender reponed there against *in integrum*."

Was not that a mouth-filler? And many a battle has been waged over the issue which it raised. You know the sort of inquiry to which I refer. Many of you have no doubt had enthralling adventures in that line. The whole department is founded on the simple proposition that a thing which is essentially a wrong as between man and man should not stand.

I do not enter into the refinements as to whether the deed or document is *ipso jure* void or whether it is only voidable. I am upon things much more fundamental than that. The categories of fraud, of concealment of essential

particulars by one party from the knowledge of the other, of duress in the sense either of actual "force and fear" or undue influence by such predominance of the will of one party over that of the other as to make the latter not a free agent—all that set of causes which comes before the Courts, are the assertion of one fundamental principle. That principle is that law will not recognize if it can avoid it, any act, agreement, contract or obligation unless these are acts of men who were both truly sane and truly free. Justice becomes the handmaid of truth, jurisprudence the vindicator of freedom.

The essential privilege of law is to defend the canon of its equality—namely, that all must have equal treatment by the law, as the broad inevitable resultant right of free citizenship. When every citizen can truly feel that the law can be appealed to as his friend, then strength and healing come into the body politic, and the function of law, even on the every-day level of individual disputes and of differences between man and man, adds to the healthy sense of independence which is the essential of progress. But whenever men, decent men, not rebels or criminals, cower beneath the law, being afraid of its inequality, saying to themselves "the world is not my friend, nor the world's law," then they become the starved apothecaries of society and are tempted to meannesses and evil ways. And that society is rotten where one citizen as against another can overpower him or undermine him

by law wielded with an uneven hand. Only the blind, the cruel, or the unjust in heart can wink the eye at this unnameable curse.

Probably upon this continent, great as it is, you do not recognize that wide plane of equality to which I refer. It is your privilege to distribute justice to that marvellous agglomeration of races which America has taken to her broad bosom. She speaks to them the English tongue; she nourishes and educates them in the practice of freedom, she inducts them into that fundamental respect for organized society which only law can conserve: above all no race, religion, colour, origin, dare arrest or deflect the course of justice. These every-day things—the straight deal, the even hand—so commonplace are they that one is apt to lose the sense of their enormous power.

But when I speak in these high terms of equality and right, as they are known within your borders, I cannot restrict my vision. My own experience forbids me. Next week I shall have to address the Bar of Canada on particular problems connected with the administration of justice by the Judicial Committee of the Privy Council. The jurisdiction of that body extends over one-fourth of the population of the globe; the jurisdiction of your Supreme Court added to that makes the principles of our laws cover nearly one-third of the human race. But how wide soever may be the range, you and we recognize that this is not a question of what race, creed, nationality or people law is to be applied to. It is a question

fundamental to the administration of widely different laws and systems of jurisprudence, some modern, some traditional, some tribal, some as old as recorded history—wherever a system of law or jurisprudence is worthy of the name these fundamental principles and especially this canon of fair and equal treatment must apply.

Now that I am upon this topic of what I may call the fundamentals of law, its deep basic universal principles, I recognize too well the needs of the occasion and the limitations of my own capacity to venture upon a detailed or didactic exposition of a subject so large and grave.

But as we go on thinking together, would you suffer from me this :

Having had to study for many years the clash of opinion and the collision of interests, not alone between individual men but, on a higher range, between classes of society, and, on a still higher, between state and commonwealth, between province and dominion, I respectfully submit to you this simple suggestion : *do let us bear in mind the correlations of things*. If the correlations of things be truly grasped, then the very secret of justice has been unveiled.

Let me try to explain to you what I mean by this. The ideals have in them nothing abstruse, nothing revolutionary, and, as you know, there is nothing new under the sun. If any of you smell Hegel and German philosophy about, I cannot help that.

Take that thing which we call a man's right. He ought to be able to vindicate it against all the world. But one imperious and resounding prohibition is laid upon him; he cannot take the law into his own hand. And well he knows if he thinks of his own right and of himself alone, and begins to exercise it with that sole idea, then collisions will take place, he will encounter surprises and mishaps, and he will come to grief. What has happened to him? He has forgotten that the correlative of right is duty. *Sic utere tuo ut alienum non lædas*. But the law does not forget it. That law, however, which he dare not take into his own hand as a master he can appeal to with the submissive mind.

For justice exists; that austere reconciler of right with duty. As deep and elementary as the distinction in philosophy between the ego and non-ego, is the broad plain fact that there are others in the world besides the appellant who also have rights, and that the interdependence of rights and their poise and balance with duties is secured by the arbitrament of a third principle, namely, justice itself. Justice, conserving the rights of all, and commanding the duties of all, issues its decree that right and duty must dwell together in the peace of mutuality. In this mutuality of rights and of duties both can be evolved into that harmony wherein law is vindicated, force restrained, progress possible; and so peace among men becomes the every-day achievement of social life.

Do not, please, be superior to these views about the correlation of ideas. You may find before we have done with them that they have a far reach.

Let us now leave the ground-floor, on which are exhibited those ordinary difficulties which demand solution and settlement between citizens in ordinary life. Let us ascend, taking our principles with us—always doing that—into the higher and wider regions of the relations of class with class, religion with religion, or party with party, in any sphere, political, economic, industrial. Here in a moment we feel the need of principles, and the supreme usefulness of those in this wider air. Here again, I repeat it, do not, please do not, forget the correlatives. As on the more ordinary level the plainest correlation was between right and duty, now a further correlation has appeared—the correlation of order with liberty.

Disputes among classes are wider in scale, often more sinister in the appeal both to force and to prejudice, and more dangerous to society at large. But the figure which must now stand “betwixt the fell incensèd points of mighty opposites” is still as before the same august figure of Justice itself, with law as its instrument of reconciliation.

Again the temptation to either side is great to exult in its own liberty and to achieve its own rights at its own hand. This temptation is vastly reinforced by combination, and sheer lawlessness gets many to defend it.

Something has been forgotten in all this, namely, a correlative; and the correlative of liberty is order. Society, however, does not forget it. While even in convulsion demanding that neither class, religion nor party shall be denied freedom, that noble thing, society also demands that the freedom of all must be protected and the freedom of each must be exercised within the limits of public order. So freedom and order are made to dwell together, and the apparent opposites are correlated by a third entity, that reconciler justice, and society is saved. The brutalities of force are subdued, the widespread miseries and sorrows of combatant and non-combatant alike are assuaged—these yield to the arbitrament of reason.

The range of law on this higher level of arbitrament is wider. Sometimes the texts of statutes are cited, sometimes the rules of common law or even procedure are founded on, oftentimes with the most accomplished skill; but everywhere and always those principles are appealed to which give equality of treatment, the just poise and balance of rights and duties, with a discipline which preserves freedom unimpaired, but makes it a well-ordered freedom.

To each class equal law must be applied. To take an illustration: Once an agreement is reached, under free and orderly and equal conditions such as would sustain an agreement on the principles of law, then the duty of the employer to pay and the right of the worker to receive wages

as per the agreement and these to the last cent, and equally the right of the employer to receive and the duty of the worker to give work as per the agreement and that to the last minute, are equally clear. To neither is chicane or adulteration permitted. The worker gives true and not adulterated labour; the master gives true and not adulterated coin. The true metal on either side; no alloy; no quibbling; honesty forbids. Be very frank and fearless about this. No liberty of any class, no discipline by any class can evade this. The attempt whether by intimidation or force on either hand is tyranny; honesty forbids.

I take no gloomy view of all this. For I recognize that more and more, as moral and economic education proceeds, the ranks of all classes are coming to recognize that the way both of prosperity and peace lies in the recognition of those standards which are at once ethical and legal standards.

Every other weapon breaks in pieces or explodes in self-destruction. And everyone that wields it, as is the case in Russia to-day, from the despot doctrinaire downwards to the famished, dying, innocent millions, everyone must sooner or later feel that—

“ ’Tis safer to be that which we destroy
Than by destruction dwell in doubtful joy.”

Time was when the so-called governing classes called for discipline, for order, order, and more

order, with a gibe and a blow on the head for liberty whenever it appeared. That was the despot's code. And then the time comes when the vaunted order is overthrown by those very forces of liberty which it was trying to repress.

Then another era arises, and liberty has its spell of excess, despising and defying all order in its early headlong career. Then liberty breaks into anarchy, and falls, groping after order, into the cruellest of despotism, and in a whirligig of inconsequence liberty itself has been destroyed. Yes : " these violent delights have violent ends." The times move fast and with tragic steps. Within one decade and within one land the world has had the transitions from autocracy to Bolshevism and from Bolshevism to despotism. It has been seen how order and liberty are both needed by mankind ; both must live, or each will fall to pieces. Burke's was a great saying : " Liberty, to be enjoyed, must be limited by law ; for where law ends there tyranny begins ; and the tyranny is the same be it the tyranny of a monarch or a multitude ; nay, the tyranny of the multitude may be the greater, since it is multiplied tyranny."

As in the humbler sphere where the law knows neither rich nor poor, so among classes the law knows neither high nor low, supreme nor struggling, influential nor humble, and it deals with all with an equal hand and an equal mind. Without that there can be no democracy of free men, for that unnameable thing, corruption, can cause society

to rot. Give what name you like to the colliding forces, call one organized labour and the other organized capital, law in the administration of justice knows neither the one nor the other. The humblest organized workers have equal rights themselves, not only against organized capital, but against the organizations of their own class.

When classes, however, are divided against classes, then too often a more serious trouble appears. It is not now the application of legal principles—those of justice: it is the abjuring of legal methods—those of reason. The awful collision has come—the collision between power and reason, between class despotism and tyranny on the one hand, and freedom and equality on the other. The cardinal principle is the simple appeal to justice—each class has its rights against the other, each class has its duty to the other. And in asserting the rights and in performing the duties, each has its liberty of assertion but each in the performance of its duty must be restrained by that order which ensures the liberty of all.

It is indeed, gentlemen of the American Bar Association, a tough nut. The appellants in the case are truly not one class against another, but society against both. Over all classes, as over all individuals, the whole body politic must assert the law, a law for all alike, a defence and a security for human society itself. Against this even-handed justice no “isms” and shams can prevail: labourism, capitalism, bourgeoisie,

plutocracy, proletariat, all these are the forms and shows, the red rags, the drums and trumpets ; the substance of the issue is—shall freedom and order live together, shall right and duty respect each other ? And shall, lastly, the method of settlement and the solution of these eternal problems lie with the brutality of force, or with the ministry of substantial reason ? With its whole power law supports the latter, and in this noble service to humanity it dare scrap neither its principles nor its methods. In fair weather or in foul it will abjure the brutality of force ; it will uplift the juster, humaner, diviner ministry of reason, and in this the law, as with a crowning consecration, demands the homage of the soul.

That very fine thinker and eloquent man Sir James Mackintosh would, I feel sure, have agreed with this ; and he expresses his ideas with a very stately diction. "There is not," says he, "in my opinion, in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence ; where we may contemplate the cautious and unwearied exertions of a succession of wise men through a long course of ages, withdrawing every case as it arises from the dangerous power of discretion, and subjecting to inflexible rules—extending the dominion of justice and reason and gradually concentrating, within the narrowest possible limits, the domain of brutal force and arbitrary will."

So far for the correlation of ideas—right and

duty, order and freedom. They are regulative in the individual and the social relations ; but they are applicable in much more extended quarters than the bounds of one nation ; they invade, they must invade, the international sphere. So widening is, must be, the range of law.

Let us proceed, however, to consider quite another and a very different topic, and so approach the higher region. Not correlations now, but collisions. Not correlations of ideas but collisions of method. Here is no blending, no co-ordination, no compromise. It is war to the knife—war between the method of force on the one hand and the method of reason on the other. Reason and force since the world began have been in grips. When the former has prevailed the majesty of the law has been justified. When the latter has prevailed civilization has been wounded, the estimate of human life has been lowered, the achievements of mankind have been destroyed, and law itself has fallen from its high estate, dethroned, brutalized and then trampled underfoot.

In every range of law, from the humblest to the highest, this operates. The rejection of the domination of force, the taking of law into its own hand, applies not to individuals alone and on the higher range to classes of society, but it applies still higher ; all nations, sooner or later, who in this collision between force and law prefer domination and power, come to a miserable end ; they that use the sword perish by the sword.

Law reaches up to this higher level, and as the years go forward, will do so with a greater and greater majesty of command; and justice, still the reconciler, will carry its principles with it into that highest range, abjuring force as a solvent of disputes, upholding the way of reason, and asking the aid of great lawyers as its ministers.

But, ministers of reason, bestir yourselves. For the other side, the brutality of force, has but the other day been vastly reinforced.

A new fear is at the heart of mankind at this hour. It is connected with the advance of science. Never since the world began had force, brutality and anarchy such an opportunity. War, with all its sacrifice, has not been too dear if it open the eyes of mankind to the appalling gravity of continuing in the worship of force and of further defying the governance of reason. A new era opens to mankind.

If you conceive of international law as binding all nations, then international law—I speak it with sorrow but conviction—international law is in ruins. Force under immoral or non-moral control can, we know, undo, and has undone, the humanest conventions of the ages. And a destruction can now be accomplished in the course of minutes which will overthrow the achievements of mankind built up in the course of centuries. The earth is affrighted.

Men, unless reason and the arbitrament of justice be reasserted on the earth, will hide beneath the ground on which the ruins of human

happiness have been overthrown. Do you think this picture overdrawn? Well, listen to this:

Let me quote from that most distinguished soldier, Major-General Sir Frederick Maurice:

“Early in May 1915, the Germans made their second gas attack at Ypres, employing a far greater volume of gas than in their first attack. I remember that early in the morning, when this second attack took place, I was riding just outside Haasebrouck when my horse suddenly refused to go a yard further, and soon after I felt my own eyes smarting. When I got back to my office I received a telegram with the news of the gas attack, and realized that I and my horse had felt the gas twenty-one miles from the place where it had been discharged. If that gas had been really poisonous, thousands of women and children in Haasebrouck that day might have been killed. A fleet of aeroplanes could now carry for several hundred miles as much gas as the Germans discharged on that occasion, and if the gas were really poisonous, and the breeze carried it for a distance of twenty-one miles from the place where it was dropped, the destruction of the civil population would indeed be wholesale.”

So it has come to this. The conflict as old as history, between right and wrong; the solutions as old as history, between material advancement callously pursued and ideal progress legally achieved; there still remain so-called remedies—

practices which are as cruel as the darkest records of uncivilized humanity, disclosed in the adjustment of human affairs by force instead of by law. All these things are before our mind now, but they have assumed a darker colour. The glory of our estate is shrouded by fear. The weaknesses of our remedies are pitiful to see. The cry of aggrieved mankind is unavailing for ever unless a new method, a new range of law be reached under which an orderly humanity shall be free, regardful of right and of duty and submissive to justice after reasoned appeal.

“Pride, pomp and circumstance of glorious war” have disappeared into a chemical cauldron. Chivalry and military glory, there seems no room for them under the sun. They have fled, and in their place is left only the diabolism of the laboratory. The powers of nature will undo us if they are in charge of the passions of men. The restraint of human ambition will be ineffectual unless humanity itself and its greatest nations rise in revolt against the tyranny of those methods which, regardless of law, have triumphantly culminated by striking humanity down.

In this task of widening the range of law your great country has produced supremely great advocates. I sometimes think that the federal idea, the idea which the genius of Hamilton and Washington combined to impress upon your people, under which state rights could be guaranteed and the union kept secure, is on the eve of establishment on a world scale. All nations

claim their state rights, all nations protest against a super-state, just as Hamilton's battles had to be fought against a similar idea of the union being regarded as a super-state.

Far-sighted, able, philosophically-minded men have discerned the day in which we now live, and the plight of humanity in which we now welter. To them it was justice, the verdict of reason and the appeal to law, which are the salvation of mankind, and that appeal was grounded upon essential and fundamental principles of right, distributed with equal hand against wrong, from the humblest up to the highest spheres of human association and activity. To philosophers like Kant and Grotius have succeeded men of powerful practical insight, such as your own Presidents. Twelve years ago President Roosevelt visited Christiania. He received there the Nobel prize, and delivered his lecture on international peace, and he uttered noble words of which every American and every humanitarian should be proud. They are these :

“There is at least as much need to curb the cruel greed and arrogance of part of the world of capital, to curb the cruel greed and violence of part of the world of labour, as to check a cruel and unhealthy militarism in international relationships. I would like you to think over the way that I have put that. I shall ever denounce wrong-doing because it is wrong, whether done by the rich or by the poor.

“We must ever bear in mind that the great end in view is righteousness, justice as between man and man, nation and nation, the chance to lead our lives on a somewhat higher level, with a broader spirit of brotherly good-will one for another. Peace is generally good in itself, but it is never the highest good unless it comes as the handmaid of righteousness; and it becomes a very evil thing if it serves merely as a mask of cowardice and sloth, or as an instrument to further the ends of despotism or anarchy.

“Now, having freely admitted the limitations to our work, and the qualifications to be borne in mind, I feel that I have the right to have my words taken seriously when I point out where, in my judgment, great advances can be made in the cause of international peace. I speak as a practical man, and whatever I now advocate I actually tried to do when I was for the time being the head of a great nation and keenly jealous of its honour and interest. I ask other nations to do only what I should be glad to see my own nation do.”

Both upon its ideal and its practical sides this policy has been followed by your great Presidents and men of affairs. Humanity in its noblest sense has never had better service than from your most thoughtful men. I think of men still living. Not of your two great Presidents alone, Mr. Wilson and Mr. Harding, but of your great President and Chief Justice Taft—that

valiant and unwearied soul, and of another whose handwriting I have gratefully detected in the humaner details of those fine pacts for the Pacific and for the limitation of armaments—I call him the Grotius of America, and his name is Elihu Root.

You see how I love the idea of justice as the reconciler of antitheses. Even political antitheses come under its sway. Be these great men Republicans or Democrats, bless and honour them all; they meet on the level of seeking and following after justice. And it is this which makes a law association, serene in the exercise of its functions and proud in its ministry, no unfitting place for thoughts as wide as bringing the world under homage to peace.

On many fair spaces of the earth, alike the hand of war and the hand of the doctrinaire who knows not justice, lie heavy like a curse. We think of the union of the English-speaking race, not for its own sake, but, at this crisis of the history of the world, for the service that lies to its hand—to stanch wounds, to redress wrongs, to remove oppressions, and, better than all these, to teach men a new and better way for body and for soul. In this communion of service let our comradeship be sanctified. Its foundations will be sure: a comradeship of righteousness.

We men of the Anglo-American race, we must be comrades all, comrades for ever. And I know no plainer call to the comradeship of righteousness than a common loyalty to law, and to the

methods of its sure and equal appeal to reason. Our reward is before us. The inspired prophetic word still rings like a command: "And the work of righteousness shall be peace, and the effect of righteousness quietness and assurance for ever."

My appeal to you, gentlemen of the American Bar, is that the ancient grudge should go and go for ever, and that the ancient comradeship should be renewed and repledged, renewed and repledged for ever.

By your forbearance, may I add this concluding word. Do not think, do not dream, that we on the other side are not aware of, and not sympathetic with you, in those constitutional difficulties with which you are confronted. We know the declarations of Washington, the fulminations of Jefferson against alliances, we know the power of the written constitution, not only over your minds but most deservedly over your affections and your hearts. It will be highest task of your statesmanship to evolve out of the citizenship of America something which, honouring and conserving it, will yet give it a lofty place in the citizenship of the world.

These things cannot be forced. To your statesmen and your great lawyers problems of constitutional complexity will arise, misunderstandings will have to be faced. It will be on a world scale with them as on an American scale it was with Washington and with Hamilton when, to their eternal honour, they unified America and answered the extreme state-rights claim with the federal

idea. But I have no fears for the result ; friendship claims it, the world awaits it.

Hard and many the difficulties will be. But is it not so in life ? How often amidst the misrepresentations, the trials, the buffetings of fortune, or the desertion of friends, have we not recalled the words of Washington while he was in the same coil of trouble as for some years to come will confront your public men. But we must go forward ; we must follow the light : from this the attractions of popularity dare not deflect us. In the hazards of life, private or professional, it is as true as in those of great public issues. We remember Washington's pronouncement :

“ If to please the people we offer what we ourselves disapprove, how can we afterwards defend our work ? Let us raise a standard to which the wise and honest can repair. The event is in the hand of God.”



ADDRESS II:

*At Vancouver on August 16, 1922, to the
Canadian Bar Association:*

LAW AS THE LINK OF EMPIRE.



GENTLEMEN of the Canadian Bar Association :

I received with gratification the invitation which you were good enough to forward to me that I should come to Canada to see you and to speak to you. You have done me a great honour, and very heartily I thank you. To see and hear you—that is an unmixed pleasure, but to speak to you has its accompaniment of trepidation. Alas, the opportunities which I might have had for the operation of what is known as composing my mind have been sadly interfered with by the following circumstances :

You are aware of the interesting and critical position in Ireland. Much devastation has been caused by the collision of rival forces in that island, and great losses by destruction of property have arisen. When accordingly a joint request was submitted by the British Government and the Provisional Government of Ireland that I should preside over the deliberations of a Commission to assess in Ireland after inquiry on the spot the compensation due, then, as you may imagine, there was much to consider. Two things became pretty clear. In the first place I must do my best to keep my engagement with you.

I made the stipulation to the two Governments, and it was granted. So I am here.

In the second place, as you will no doubt fully understand, all leisurely preparation for making any address which would be an adequate response to the honour of your request had to be foregone.

For many months past there have been few moments of leisure in my time: and such energy and thought as I could command have had to be devoted to the solution of a problem, large in dimensions and tragical in intensity. No less was it than to endeavour to achieve a quieting of the public mind and an achievement of public peace by the way of private justice. I do not dwell upon these matters further except, as I say, to throw myself unreservedly and in no conventional sense upon your indulgence.

The other day I spoke to the American Bar Association, choosing as the topic of my imperfect discourse "The Widening Range of Law," and briefly surveying the different levels upon which, on a scale ever extending, jurisprudence and the fundamental principles of law are seen to operate. On the broad and plain and every-day level of private life with rights and duties ever demanding their correlation and reconciliation by justice whose minister is law; on the higher level better realized—better organized, than ever in history—in which arise the disputings and the deadlock of classes, and in the midst of which and often in circumstances of no little public danger, legal principles have still to be evolved and

applied. Here a new correlation is demanded : liberty is to be reconciled with order. The rights of society as a whole are to be vindicated against each and every class, and the clash of classes *inter se* transmuted into harmonious development. The adjuster, the reconciler, are still that same justice and those principles of law of which you and I are the Ministers.

As justice and law rise—and we must respect their claim to do so—to a still greater height, a level is reached obscured by storms and clouds fiercer and more menacing than the world has ever known. Nations themselves must climb and wait, and wait and climb, and must gather their breath again. International law must grope about among the ruins which have been left after the explosions of lawless ambition have laid low much that generations of lawyers had endeavoured, working on lofty and commanding places, to edify into a lasting fabric.

And now to-day here in your beloved Canada, if the venue has changed, still there may be—in an air less rarefied and in which the warmth of friendship and of kinship is even closer than before—some general topic akin to my last, on which you and I might talk together.

I like to think, as a Scot, of the citizenship of the world. In that broad air Scotland and its sons have played no mean part by travel, by adventure, by fighting, by knowledge, by comradeship, by captainship, in opening the great

oyster of the world's resources. Fairly clear in brain, fairly sure in aim and fairly strong in arm, this cosmopolitan wielded sometimes the sword (we must do that deference to the literary allusion); sometimes the lancet; sometimes the hammer; at other times he would don the gown and teach philosophy and law to foreigners in their own tongue with a Highland accent. And he played the game everywhere, with a leaning to metaphysics, so they say, and never quite blind to the main chance.

But the world has been wonderfully responsive to the efforts of my country. Time was when the Scot abroad was known on every bloody European field and in every learned European University. It was not that he went abroad alone to fight; he also went abroad to learn. Among his learning law was one of his great prizes. Just as two generations ago he went with an independent mind to hear and know what German theologians were about, with the result that they found no stouter or more subtle confounders of their criticism than among Scottish Divines, so, for many generations before that, students of law went to foreign universities and came back, bearing their independence of attitude and of mind, and wearing their learning with no sense of oppression but as a workable, useful article. They tried their best to stamp out the scholasticism which was too apt to mingle with the study of Roman jurisprudence. They

elevated common sense and plain dealing as better than useless refinements; and so the law of Scotland was built up.

England was still the old enemy, making her customs the foundations of her common law, and that with an air superior to all and every other jurisprudence, even that which was older and much more learned than her own. But the common law of Scotland was of a more scholarly type. It was rested upon the civil law, that marvellous evolution of the Roman practical mind which, finally systematized by Justinian, yet continued to evolve and to become the parent of other forms of jurisprudence. Of these the Dutch-Roman law under men like Grotius, and the law of Scotland under men like Lord Stair—famous, powerful men both, alike in law and public affairs—still remain the modern examples.

Sometimes no doubt the learned student came home to trying if not squalid conditions. His lament could be heard :

“ Oh, is it not hard that a student of Leyden
Should hardly have whole coat and breeches to stride in,
While half-breds and homespuns their carriages ride in ;
Oh, is not this hard for a student of Leyden ? ”

If I remember it, the jingle went something like that.

Here is a problem which I suppose even men in Canada face. And a fine and worthy problem it is, namely,—trying to stuff learning and know-

ledge into one's poor head, and yet to make that not inconsistent with helping the twin causes of an honest livelihood and a cultured life.

A clever, but rather superior person,—Bagehot, no less,—gave that truth a nasty turn. In dealing with the excogitations of Adam Smith, the author of *The Wealth of Nations*, he describes them as part of a wider design in the great thinker's mind which he, Bagehot, neatly calls “an immense design of showing the origin and development of cultivation and law; or, as we may perhaps put it, not inappropriately, of saying how, from being a savage, man rose to be a Scotsman.” That is wiser than it looks. And as for Bagehot, all I say of him is that if he had been, say, at the Bar of the Privy Council or a Scotch constituency he would have been none the worse of a heckling.

For myself, I think of the old Scotch motherland very much as I think of the old Scotch mother, who reminds her stirring and stalwart boys—and reminds them not infrequently with physical emphasis—to forget neither their catechism nor their lessons. Gentlemen of the Bar of Canada: If we would serve that land that bore us well, let us be frank with our hearts and minds; these twin causes of an honest livelihood and a cultured life sound commonplace; but good and sacred they are, and temptations and worldly engrossments are apt to drive us past them. They have their public side. Your problems are no less than those which confront a great nation. Young that nation may be, lusty

it may be, but well principled in heart and mind it must be. That goes without saying. In that the law can help. For the law we practise at its highest must be the law we love at its deepest,—resting ourselves upon those ethical foundations, to undermine which, to betray which, is to put in peril the very structure of society itself. The standard of professional honour never was higher. You remember the honest and rollicking code of Burns, in which the impulse of honour is more powerful than the fear of hell. That, says he, is

“A hangman’s whip
To haud the wretch in order.”

“But,” he says, and says immortally :

“Where you feel your honour grip
Let that aye be your border.”

We think not of the punishments of a violation of a professional code: honour is a code more controlling than fear.

One thought I must be allowed to express, and that is that the more one sees of law in those wider and higher levels to which I have alluded, the deeper is the sense of veritable homage that we pay to the purity of its quality and the sweep of its power. As we see it, it stabilizes the very life of civilization.

But it can only do so on two conditions. The first of these, of course, is that it be true to itself, free from every taint of dishonour.

“ In the corrupted currents of this world
Offence's gilded hand may shove by justice,
And oft 'tis seen the wicked prize itself
Buys out the law.”

Wherever that can be truly said, then a curse has descended upon society. Law can have no majesty without integrity. Unless law be strong within and without; within to preserve its integrity against corruption; without, to preserve its majesty by resisting and subduing lawlessness on any scale large or small;—unless law prove itself fit for that high task, paralysis has overtaken an age or a race and progress must seek a purer and a healthier air.

The second condition is one that only progressive communities demand and only cultured democracies can most steadily realize. It is that law must not be enclosed in a monumental past. It must feel the impact of modern ideas, be receptive of new light, and in short must move with the times. Democratic parliaments and administrations are aware of this and are apt to play the busybody about it,—with spasms of jerky and haphazard legislation, and clouds of Rules and Orders. But in the judicial sphere also there is felt to be, there must be, room left for movement in the legal mind. That movement must be, though alert, yet well considered—in the application of ancient and even venerable doctrines to newly emergent conditions of life and thought, and all this so as, even in the interpretation and construction of contracts and settlements, to

achieve one object. That object is to prevent the dead hand from cramping the living spirit.

Bentham, with whom I have the misfortune so largely to disagree, has, as Sir Henry Maine shows, the crowning credit of at least being a liberator in this direction, although, alas ! he confined the liberation to the legislative sphere.

Wherever mankind is truly progressive these two conditions of progress within the law accordingly also obtain : justice ever incorruptible yet ever evolving upward and onward into new reaches of truth and freedom. So that it may be truly said that the progress of law is a condition and index of the law of progress and the stagnation of law marks for progress its arrest and its defeat.

The conclusion from all this is indeed one of the gravest moment and of the highest responsibility for the legal profession. To keep the law in its administration stainless, even-handed and beyond reproach, that needs no expounding ; it is part of the code of personal honour. But to keep the law from sterility, capable of moving alertly to the call of justice, unafraid of novelty of method or interpretation, fitting with the movement of the times,—that is part of the intelligence of a truly progressive community. This great function must be exercised within safe bounds—that is to say, by men ever mindful of those sound fundamental principles of law which are not alone the guardians but ought also to be the companions of society as it moves through life.

I have said "wherever mankind is truly progressive." Too often we forget the vast masses of humanity—even civilized humanity—to whom these ideas make no appeal. Sitting down contentedly through the centuries, they note their ancient laws which tradition has ascribed to the direct inspiration of Deity, and their whole legal system is comment, comment, nothing but comment on the old,—with criticism a heresy and change a horror. Such is the rarity of progress.

Sir Henry Maine expresses the thought thus :

"It is only with the progressive societies that we are concerned, and nothing is more remarkable than their extreme fewness. In spite of overwhelming evidence, it is most difficult for a citizen of Western Europe to bring thoroughly home to himself the truth that the civilization which surrounds him is a rare exception in the history of the world. The tone of thought common among us, all our hopes, fears, and speculations, would be materially affected, if we had vividly before us the relation of the progressive races to the totality of human life. It is indisputable that much the greatest part of mankind has never shown a particle of desire that its civil institutions should be improved since the moment when external completeness was first given to them by their embodiment in some permanent record. One set of usages has occasionally been violently overthrown and superseded by another : here and there a primitive code, pretending to a

supernatural origin, has been greatly extended, and distorted into the most surprising forms, by the perversity of sacerdotal commentators ; but, except in a small section of the world, there has been nothing like the gradual amelioration of a legal system. There has been a material civilization, but, instead of the civilization expanding the law, the law has limited the civilization."

To us, revelling in progress, rejoicing ever in the new light, such thoughts are a sedative to pride and a stimulant to responsibility. Much have I canvassed them during the Great War. May we talk over this great topic together ? Perhaps Sir Henry Maine might have subjected his view to some modification had he been able to witness the movements of the times in which we now live. They extend over the vast, stagnant waters of ancient civilizations : movements towards new knowledge, towards self-expression, self-development, self-government. In India and China, the structure of a society immemorially old did occasionally undergo a vast upheaval at the call and suit of a great warrior founding a new dynasty. But other vast upheavals may even now be at hand, this time at the call and suit, not of great warriors, but of great thinkers founding schools of seminal ideas, receptive as never before to fresh religious, political and legal concepts. What part is to be played in this development by that minority which till now has alone embraced the progressive portion of mankind ?

Let me speak frankly, as one can only do to broad-minded men. I am no Imperialist in the vulgar sense which thinks of the outer world as an underworld, which chants its superiority to its isolation from that, and exults in the assertion of its rights to the point of domination. That vulgarity might be imitated to-morrow in the East by a pinchbeck Hyder Ali, just as it was displayed yesterday in Europe by a pinchbeck Napoleon. And my humble view is that those progressive nations of the world are alone fit to live, who are loyal to the principles of law which, emanating from the fountain of justice itself, place alongside of our rights our sacred duties to mankind, which lift higher than domination the principles of equality and brotherhood, the trusteeship of service. Unless the Great War has taught men to abjure the vulgar and false Imperialism of selfish ambition and to cherish the noble, sane, powerful and consecrated Imperialism of service, distinguishing fair from foul, and foul from fair, law is a dead force and the war has been fought in vain.

This latter Imperialism, hard and difficult though its idealism be, is nevertheless in my belief the Imperialism which can live, and—I trust we say it earnestly and without pharisaism—it is, it must be, the Imperialism of the British Empire, if the life of civilization is to be preserved. If the progress of mankind is to be assured for good, it must be so, my veritable belief is, by the efforts of the Anglo-Saxon race. I do not speak in any

spirit of narrowness, but this world has never known a time in which the idea of development and consolidation of a race has been in the first place so consciously entertained as now, and in the second has been so ethically based as now on the idea of existence not for itself but for a higher and a better purpose, namely, the service of the world at large.

If I speak of the Anglo-Saxon race, it is because I love every part of it and I like to think of it as a whole. The other day at San Francisco a great gathering of the American Bar Association joined with me in renewing mutual fidelity and in swearing death to the ancient grudge.

But it was the British Empire, the beloved British Empire, that as one man and at one moment sprang to arms in August 1914. By and by, after much deliberation on complex problems arising out of a separate constitution and a separate life, the United States came along. It was a turning point in history when civilization thus brought up its reserves—its reserves from the Anglo-Saxon race. What man can declare the saving to humanity, the sudden arrest of German ambition, perhaps the sheathing of the sword, the saving of "red ruin and the breaking up of laws," if the entire Anglo-Saxon race had to begin with signified its essential unity by a simultaneous stroke? In the realm of such conjecture we can only bow the knee before the Greater Wisdom and the inscrutable decree.

But the British Empire stood together; vowed

its vows ; Mother and offspring ; one family. What a spectacle it was ! The venerable Mother, that Britannia whose pride in her sons gives her an eternal youth, and whose love of right gives her an eternal power : she stood as of old, poising in her left hand the scales of justice. In her right she had borne the distaff, but now at the call of a great wrong to be righted she laid down her distaff and took up the sword. And through all the blinding horror of conflict and its aftermath she did her best to let the scales of justice swing true. And that is how we look at her, revering her, to-day, austere in majesty but pitiful in heart, the image and embodiment of law.

When we think of the principles of law, pray, if we value breadth of mind, let us do so in a non-lawyer spirit. The principles of law are not national : they are universal. A nation is great according as it pays homage—wider and deeper as history moves on—to those verities of justice which cannot fail and which from age to age evolving law more and more adequately expresses. The time has at last come when we can declare that no war can be justified which is not waged for righteousness, and no victory can be complete which has not helped to abolish lawlessness from the earth.

I wish to make it plain that the British Empire is not to me an Imperial dominion but an Imperial brotherhood. Canada has arrived : her nationhood is accomplished ; and it has been accomplished in her finest manner—that is to say,

in an unselfish cause and in the brotherhood of service.

As to Canada, we can say of her, as of Australia, of Africa, of New Zealand, of every self-governing colony, nothing better than what we say of the British Empire itself.

If the British Empire is to exist for itself and its own ambitions, and its own aggrandisement, it will perish, and its latest days will be its worst; but if it is to come to the rescue of humanity, to the succour of the oppressed, to the healing of society, it will do so by a homage to those principles of law which overreach the boundaries of States and which, being consciously maintained, can bind an Empire together, by that marvellous reconciler, adjuster, inspirer, justice itself. And it is the Ministry of Justice in which you and I are here and now enlisted. Law is the Link of Empire.

As to the place of Canada in that Empire it is unnecessary that I should speak. The subject has been quite recently handled with felicity and skill by my right hon. friend, Sir Robert Borden, with whose sketch of the rise of Canada from a Crown Colony up to the penultimate stage of nationhood which was represented by the famous resolution of the Imperial War Conference of 1917 I wholly agree.

Said that resolution :

“ They deem it their duty, however, to place on record their view that any such readjustment,

while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognize the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine."

Sir Robert—watchful man and keen lover of good business—shows, I will not say uneasiness, but what, in my humble opinion, is a very justifiable spirit of firmness on the issues raised. Says he:—

"The resolution of 1917 will be barren of further results unless a way is found to work out its principles in practice. It can hardly be claimed that any development since 1917 has accomplished this. The resolution of 1917 was based upon vital considerations which cannot lightly be disregarded. While it is true that the Dominions were represented at Paris, that they took their place at the Peace Conference, and that they became signatories of the Peace Treaty, I have yet to learn that since the conclusion of

peace their right to 'an adequate voice in foreign policy and in foreign relations' has been recognized in any effective or practical way."

It was only the other day that Sir Robert's *Canadian Constitutional Studies* were published. But history moves in our day swiftly; and much is happening, and has happened, since that brochure saw the light. At the Genoa Conference did the United Kingdom stand alone for the Empire? Not at all. As at Versailles, so at Genoa, a great British Empire delegation met together to do its best in the mighty issues which involved the economic, social and political shaping of the old world—still distracted, still in convulsion after the upheavals of the war. And I may venture to bring to you to-day as a message from the Prime Minister of England, Mr. Lloyd George, this statement of the actual occurrence and fact of what I call the final entry of the self-governing Dominions into Imperial nationhood. I quote from his declaration in the British House of Commons :

"The British Empire Delegation met together to consult upon the whole of these facts. You had the representatives of Canada, Australia, Africa, New Zealand and India. They came into our consultations.

"There was not a single step of any importance that was taken without previous consultation with them, and the action which we took had their unanimous support.

“ They came to the same conclusion as we did, that it was necessary in the interests of the peace of the world—whatever we thought about the Soviet Government—and let me say at once we had no differences of opinion about that—that some arrangement with Russia was necessary in order to save the misery in Russia itself, to enable Russia to make her contribution to the needs of the world, to help in the swelling of that volume of trade upon which so many millions of people depend for their daily bread, to give the sense of stability and security to Europe, and, above all, to avert those evils which lurk in the future, if nothing is done in order to set straight this tangle of misunderstanding.

“ For that reason the British Empire Delegation, all of us, gave the whole of our strength and our minds day after day to fight the battle of peace in the world.”

I know well enough the ways of diplomatists to affirm that it would in their opinion be more correct to have a written supplement to the Resolution of the Imperial War Conference of 1917. That will no doubt come; but the fact is there: it can never be gone back upon: the nationhood of Canada and her place in the most august Councils of the world are established and sure, established beyond question, established for ever.

I think—pray forgive my lapse into an historical musing—I think that Lord Durham would

have loved to see this day. To him it was given to profit by the mistakes of an earlier day on American soil—the cowardly acquiescence of Ministers in the senseless prejudices of a King. And Durham had vision, wisdom, courage. So much so that his famous Report of 1839 makes that year an epoch in the history of Empire, of self-government, of the reconciliation of races, of constitutional freedom. Durham ranks with Alexander Hamilton, and the constitution builders of the world. In spite of the usual clamour of opposition to any liberalism which vests in the people concerned the responsibility for their own destiny, his fearless recommendations were adopted; and they switched this great Dominion on to that line of responsible self-government which, forgetting the past, granted amnesty with a full hand, and faced the future with a glorious faith in free institutions.

We know these objectors to the grant of a constitution well. They always pose as loyalists, and they always do ridiculous and shameful things. They savagely trumpeted the Report as treason, the amnesty as a truckling to crime; and when the sagacious son-in-law of Durham, your Governor-General, Lord Elgin, of famous memory, went steadily forward with the policy of forgiveness and reconciliation and trust, they burnt the Parliament Buildings in Montreal, threatened more trouble, and pelted the good man with stones. But the policy triumphed: and the Empire was a safer Empire; and Canada

has waxed steadily in wisdom, in stature and power—the very idea of vassalage uprooted, and the idea of partnership growing and to grow.

History does repeat itself: and the fine Canadian example was repeated. In 1900 in the *Nineteenth Century* review, a man of my name wrote an article upon the Canadian precedent and the Durham Report. He humbly offered these as a guide and help in the settlement of the South African racial question. That precedent, said he, demonstrated the value of the gift of responsible self-government. The paper was, of course, of no use; so-called loyalism knew a good deal more about firm government than that, did they not? And it was not until Sir Henry Campbell-Bannerman put his principles to the proof and granted a Constitution to South Africa, that true peace and true loyalty saw the light. The good faith which Africa has kept to its Imperial connexion, its Imperial obligations and its Imperial destiny has justified the policy and astonished the world. No accession of strength to civilization itself has ever been so swiftly won, simply by the great act at once of adoption as a son and enlistment as a partner, by the Motherland.

Still again the Canadian precedent reverberates. The ink is hardly dry upon that concession of self-government to Ireland which it is hoped will bring peace to a land distracted for centuries. And the Irish Constitution breathes the very words, as well as the air, of this great

Canadian Dominion beyond the sea. Your constitution, the British North American Act, the famous entrustment of "peace, order and good government" which we in the Privy Council know so well, the reference to Canada by name—all these crop up in this new constitution to which every lover of peace and enlightenment wishes well: who will deny now that your rise and greatness are not only an Imperial asset but an Imperial example? United we stand: it needed not the sacrifice and suffering, the glory, the co-operation and the discipline of the Great War to declare it. The cause was greater far than Empire or our strong selves: it was the defence of righteousness and peace we stood for; our trusteeship for that was a joint trusteeship, and in our unity our humble plea is that we did in an hour when freedom was at stake defend it, enfranchise it of new, and did not "forget

That we owe mankind a debt."

It is this among the nations that gives true leadership. Yes, the secret of true leadership of Empire is and must be service, the secret of true unity of Empire is and must be justice.

Thus we come back to law, to the law—your profession and mine—but to law in a very noble sense as the servitor and interpreter of justice, to law as an Empire binder. This conception is not new: it is centuries old. But there is modern development of it—a development more pronounced since the Great War.

In the second century after Christ Florus wrote a brief epitome of the history of Rome, that little city on the Tiber which grew to command an Empire bounded only by the unknown. Florus shrewdly remarks, "*Viribus parantur provinciæ jure retinentur.*" In one sense it was true of the Roman Empire, as it would have been true a year or two ago, had Germany attained the empire of the world. Provinces, kingdoms, dominions, were made to conform in their laws to the centralized law of Rome, whose jurisprudence thus dominated the world. This compulsory conformity was supposed to symbolize Imperial conquest and Imperial pride, and at every hand was accompanied and sanctioned by the heavy weight of the force of arms. So it would have been with a law emanating from Berlin. Everywhere the light of law shining from only one centre, from which centre also came the threatening thunders and the missions of Imperial power. Provinces were retained by law, no doubt, but it was not their own law which they had been tutored in past ages to obey, but a new superimposed system acceptance of which as a whole was sheer submission, and rejection of which made any person, or people, or province an outlaw or a rebel.

The genius of the law of Rome, by its inherent reasonableness, commended itself for adoption after the edifice of force which it had compulsorily imposed was broken and disrupted. But essentially it was a system of force,—proud, centralized,

imposed from above. That was the *jus Romanum*. It would have been the *jus Germanicum*.

Gentlemen of the Canadian Bar : we must pay our historical homage to the scheme ; but a law of that description is unfitted for any modern empire which means to be an empire of service to mankind, and an empire which will endure. The world has never known any contrast so great as between empire and law as we conceive them, and empire and law which are the concepts of what may be called the Roman-German system.

Think of how different our ideas are. Every land contributes its own crop as per its own climate : it shows forth its own needs, and these vary as from arctic to equatorial conditions : and so all the lands thus contributing and co-operating move forward in those channels of custom, to destroy which is to lay society in ruins.

To recognize these customs, to acknowledge frankly the right of self-government, to respect liberty, to respect history, that is the English-speaking system. The law, the true and enduring *jus civile*, which is the great umpire, interpenetrator, helper, is not English law, nor Canadian law, nor Scotch law, nor Australian law ; but it is those principles of jurisprudence which inform and bind together the whole mass of co-operating provinces and states under concepts which underlie all variety of local and juristic expression, and which are the guarantee of civilization. Law,

according to this modern idea, has evolved more freely in the British Empire than in any other sphere. The chances of its life are far more enduring, because it is commended by reason itself, than any system however mighty which is imposed by force. Over against it stands what I may call the Roman-Prussian system, which is self-centred. Think of it again. It passes from province to province accomplishing unity by the sword, and imposing the forms of its law to its utmost circumference. It suffers no history, no immemorial custom, no local or sentimental attachments, to stay its hand. It achieves unity, a unity of submission by the suppression of variety and of local liberty, till, at length, the vast humiliation, with occasional extirpation, achieves its triumph.

We of the British Empire,—a time may come sooner than we expect, that the same may be said of the entire Anglo-Saxon race,—we must and do stand for the other view which finds a place of brotherhood for all nations under the sun, and which achieves that unity in variety which is harmony. Here, at the heart of the matter, law rests: for the law which can endure as an elevating, harmonizing and binding force is a respecter of traditions, which, through the ages in every land, have contributed something to the noble inheritance of mankind. It is in this way that law, as a link of empire, comes to be a very sacred thing. For, by force of reason and principle, law is lifted to the level of true majesty

as the friend of progress. It gives liberty and individualism among the nations their chance, and receives back from them an enlightened gratitude of co-operation.

Many fine and good things have been said about the common law of England and by fine and good men. In a manner I look upon it from a point apart. But who, pretending to an ordinary measure of intelligence and knowledge, can look upon it without admiration and marvel? Its details, like the details of any laws, present of course occasion to the scoffer; but in its mass it is an expression of the instinctive sense of how an honest, free-born people wish to have their affairs conducted—a living and masterly instrument working always through history towards the light and in every age bringing comfort to the commonwealth.

I think upon the whole that that must have been the way in which, in this ampler Canadian air, the sons of England still looked upon it. The instance I give is peculiar. You know the subject well; but I should just like to set a few heads down again. Canada—as one Colony and under the name of the Province of Quebec—was ceded to England by the French in the year 1763. In 1774 the Quebec Act provided that in civil matters the old law of Quebec should still apply, “while in criminal matters the English law should prevail.” What was the old Quebec law prior to 1763? Its sources are thus stated by Burge:

“(1) The *Coutume de Paris* and the Ordinances in force within the jurisdiction of Paris, except such as were clearly not intended to have effect outside Paris.

“(2) The *Arrêt du Conseil du Roi* and the Ordinances published between 1663 and 1763, but in both cases only if they had been registered by the Council of Quebec.

“(3) The Ordinances of the Administrative Authorities in Canada, chiefly those of the Intendants.

“(4) The Judgments of the Courts.”

So far as civil affairs were concerned, this was French, French out and out. Then in 1791, the so-called Quebec was divided into the provinces of Upper Canada and Lower Canada. And, in 1792, the striking change occurred: Quebec remained as Lower Canada; the remainder within a year passed its famous Statute of October 1792, enacting what may be called the reversion to the Motherland—“that . . . in all matters of controversy relative to property and civil rights, resort shall be had to the laws of England, as the rule for the decision of the same.” This reversion was acknowledged in the preamble with the utmost frankness: “Whereas since the passing of the Act Aforesaid, that part of the late province of Quebec, now comprehended within the province of Upper Canada, having become inhabited principally by British subjects, born and educated in countries where the English laws were estab-

lished, and who are unaccustomed to the laws of Canada."

The broad and emphatic admission to the laws of England has extended and extended westward over sturdy, powerful and growing provinces, till it reaches the Pacific.

Seventy years before the reversion, namely, in 1721, Nova Scotia had acted on the "Instructions" of its Governor and made the laws of Virginia—which was English of the English—the rule and pattern for its government.

Quebec stands alone; but are its laws therefore neglected, or less entitled to careful respect? By no means, and in no degree whatsoever. They are as much and equally entitled to that, as any within the vast variety of customs, traditions and laws which, at the foot of the Throne, are examined, deferred to, and administered as part of that network of jurisprudence which interlaces the Empire.

Canada within her own borders thus illustrates that harmony which is reached when the basic principles of justice are rested on, as the solid rock of jurisprudence in its every form and its every adaptation.

I know of no country, except India, where the words of Burke are so verified to the letter, and in a sense even wider than he conceived. His wonderful diction, you remember, declares jurisprudence a science, and he thus described it:

"The science of jurisprudence, the pride of

the human intellect, which, with all its defects, redundancies and errors, is the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns.”

Comparative jurisprudence, as each community like your own achieves its nationhood, proves more and more the soundness of this view, that law links Empire up in co-operative brotherhood. I have mentioned to you how, in the realm of constitutional law, the Canadian record has become a model more than once referred to in wide spaces of the earth. In the legislative sphere everywhere the same twin principles seem to operate, the respect for great and splendid traditions is shown nowhere in the world more clearly than in the laws of the British Empire.

In this legislative sphere the development of legal rights and the measuring out of remedies,—as new ideas of progress in society evolve,—may be natural enough when we think of the common origin and ideals of those who stock the home country and the self-governing dominions. It is nevertheless interesting to observe how even the language of the mother of parliaments seems to be watched for, and—so far as may be—copied, in the numerous legislatures of dominion, commonwealth, province, state, as if one empire and one law were deliberately evolving together. Law, even in its evolutions, seems to symbolize a link of empire forged out of reason and affection and freedom, which make the sons speak with the

mother accent, and the mother proud of the stalwart activities of the sons.

So far for the evolution of law and empire on the constitutional and legislative sides ; but when you come to law pure and simple, the British Empire pays to it respect far worthier than that which could proceed from and be supported by centralized authority and power.

In the first place, an Empire, believing in freedom and self-government as a rule of right, not for the present alone, but for the future, recognizes also in the vast burden which it bears, the respect which is due to a mighty past : massing together the laws moved by the present-day spirit among progressive peoples, with those inspired by traditions extending from the very dawn of recorded knowledge. This is a double responsibility demanded both by the ancient and by the modern spirit. This is the genius of the British system. Law, with this double homage, wields a jurisdiction over one-fourth of the population of the globe.

Gentlemen of the Bar of Canada : It is to that wide inheritance that you, as Ministers of Justice, have entered within this Empire. It was but the other day in the Judicial Committee of the Privy Council that a Judgment of the Board was written on the rights of the placer miners in the Yukon Valley under the law of British Columbia. The ink was hardly dry upon the Judgment when another had to be composed dealing with the laying out of the town of Calcutta. The muni-

cipal laws of that great city had to be construed and respect had to be paid to the rights of the worshippers of Kale, the goddess of destruction, in temple, pilgrim hostels and other buildings which were the endowments of their creed.

I could detain you for hours on this topic of the variety of interests which law within the Empire has to adjust. But it is not even that which is the astounding tribute to the Imperial system. It is that the laws themselves are different. How is the reconciliation of a common appeal accomplished? It is because at the very threshold stand principles, radical, imperious, unforgettable; and they are all essentially ethical principles. Only the other day I received a letter from one of the most learned and distinguished judges of Australia. He keeps a close grip of what goes on in Whitehall; and well he may; for he recognizes that it is not a British Court but an Imperial possession, his Court and your Court and my Court, our very own. He writes: "I wish to tell you that very recently I have proved the very practical help of some of your Judgments in Indian appeals. . . . We had to consider in the Full Court a case of 'undue influence.' That is a branch of law that is difficult to 'collect' in systematic shape from the ordinary cases. But among the Indian appeals were three that I found of immense assistance." He cites these which "do much to solidify the legal conception of undue influence;" and he speaks with manifest sincerity of the help received.

But these are specific and detailed doctrines, and I had rather get to principles wider and more fundamental. Of these I name two. They are, for instance, so commonplace as these—Honesty and Equality.

Equality before the law. You and I who are accustomed to it as among the familiar fundamentals of legal procedure are apt to forget how much that signifies in the Government of an Empire upon which the sun never sets. On this point of equality alone,—what a privilege, for instance, is it not, for India and the farthest bounds of the British Empire to know that law upholding freedom, creating and conserving right, is administered with an equal hand, not to the Zemindar, the Rajah, the Maharajah and Prince alone, but down through every rank and order, caste and creed, to the humblest cultivating ryot on the Indian and Burmese plains. I declare to you that I sometimes think that the *Pax Britannica*, as indeed the *Pax Orbis*, rests in its ultimate security on that administrative jurisprudence which with equal hand preserves for all alike the priceless privilege of an appeal to justice—wide and open and inviolate.

Then take the principles of Honesty,—deeply embedded in law, wherever law is worthy of the name. That, you will say, is a matter of course. Well, perhaps. But it is no light task that jurisprudence has to accomplish when it administers even that fundamental principle, as one necessarily underlying august and century-old traditions.

Think, for instance, of these curious illustrations: The very gods of India are juristic entities. They are the legitimate donees of vast endowments. Their properties and possessions are respected and protected. Each god, through the officers of his temple or the manager of religious endowments, educational endowments or sacred places, has a right and title to sue. Even as against those priests or dignitaries, the ordinary worshippers have a right and title to vindicate the property of their god. It is the arraignment of the faithless by the faithful, and it is the glory of law to interpose for the simplest of reasons, namely, that honesty is at stake. Then the other day a Judgment of the Council was delivered in a case coming from the Carnatic and involving a sketch of the history of that part of the world from the time of Hyder Ali. In it the rights of the god Vishnu were maintained to lands and properties and to mesne profits against a powerful Dhamakarta,—a personage of ancient family to whom had descended the high office of manager and administrator of temple, jewels, lands and possessions dedicated by believers to their deity. This personage was judged according to the eternal principles of common law familiar to you all, namely, those applicable to the responsibilities of a defaulting trustee. These things reach out over a wide range, wide as the world! I think it not unfitting that distinguished men such as I see before me, even as they discern afresh that there is a world elsewhere, may have

some glimpses of the splendour of the inheritance which they share.

Again I beg of you to understand that I do not refer, when I speak of equality, to the administration throughout all the regions of Anglo-Saxon power of the same law. That would not be the conservation, but, by making no allowance for feelings and traditions in many cases older far than the history of our race, it would be the betrayal of freedom. To us, as free men, the centralized despotism of either Roman or German administration makes no appeal. But what I refer to are the underlying principles of all laws which are worthy of study. To give the Mohammedan law to the Hindu or the Hindu law to the Mohammedan, or to give British or Canadian law to either, might produce a catastrophe in many portions of the earth the like of which history has never known. But to take all these laws, to recognize them in the truly British fashion, not to overthrow them as would a despot, but to administer them with a scrupulous fidelity which commands respect,—this is to make the great discovery that underlying all forms of jurisprudence, ancient and modern, there rest those deep basic principles which are ethically inviolable, and which bear the mark of the eternal.

Anyone who cares to study the varieties of law and circumstance which are submitted to the Judicial Committee, will receive a romantic, true and rare insight into what law means as a link

of Empire. Here are administered not only English law as modified by local legislation, but French law in Quebec and Mauritius ; Roman-Dutch law in South Africa ; essentially Roman law in Ceylon ; Hindu law, not of one school but of various schools ; Mohammedan law ; Buddhist law ; laws which govern succession and sometimes interests and rights of vast pecuniary and social importance and yet are but the laws of families or tribes. Here is variety indeed, but binding it all together is the unity of those ethical everlasting standards which are but the attributes of righteousness itself.

The human heart seems, under all circumstances, everywhere, to respond to the deep note of justice, and so justice—as we come to see in everyday practice—working through law, steadies, uplifts, and binds together all subjects of the King.

The response to the Imperial effort is oftentimes of the most touching significance. Think of this illustration which was given to me the other day in some notes, by my friend Mr. Reeve Wallace, Sub-Registrar of the Council :

“ If further evidence beyond what appears above were required of the confidence reposed in the Court by the people of India, it would be supplied by the collection of letters, often pathetic in their simplicity, which each Indian mail deposits at the Privy Council Office. These communications are always considered by the officials

of the Privy Council Office with great care, and a reply is sent to the applicant advising him or her as to the course to be pursued to enable the matter to be brought forward in a regular manner.

“ If on the face of the papers there appears to be a *prima facie* case, and the applicant states that he is too poor to engage a lawyer, the Privy Council Office sometimes asks one of the solicitors who regularly practise before the Judicial Committee to look into the case, gratuitously, for the applicant. This request is willingly complied with, and cases are often heard by the Judicial Committee which have begun in this rather irregular way. One such case (not, however, from India, but from West Africa) deserves special mention. Some years ago a letter was received from a West African native, complaining that he had not had justice in the local Court and stating that he wished to appeal to the Sovereign in Council. The Registrar of the Privy Council explained that such matters could not be dealt with through the post, but that the applicant must either instruct a London solicitor or appear before the Court in person. One day some months after the officials were somewhat embarrassed by the arrival of the applicant with all his papers carried in a pile on his head! He stated that he had worked his passage over and had come in answer to their invitation. A solicitor who was approached by the Privy Council Office consented to take up the case and in the

result the appeal was allowed and the applicant returned to West Africa a happy man ! ”

Gentlemen : When I think of nationhood, independence, empire and law, there is an historical and international thought that often occurs to me. I do not like the word “ Dependency.” As for independence : it is not very likely that I myself, a Scot of the Scots, would be apt to underrate it. The glorious privilege of being independent, it is in our very bones ! But it was the poet of independence who was also the poet of brotherhood, of a great human pity and human love. Let us avoid that glamour of names which breeds confusion of mind and the train of mischances which confusion brings. Sure I am, and I put it to you, on reflection are not you sure, that independence and isolation are sometimes mistaken for each other ? But these two things independence and isolation,—they are assuredly and essentially different things. Independence is the defiance of domination ; isolation is the defiance of brotherhood.

The world grows smaller and smaller every day by the facilities for inter-communication. The obstacles of a physical kind to the union of Empire and development of Empire which were seen by grave men like Sir George Cornwall Lewis in his *Government of Dependencies*, and even by wildish men like Thomas Paine when he gave his counsels to the American nation—almost day by day these obstacles grow less and less. As

this is so, so isolation becomes less and less feasible in human arrangements, and yet independence in the true sense becomes more and more priceless.

See what it has done in the case of England and Scotland. That was a difficult case. Monarchs and statesmen had grappled with it for centuries. Shakespeare puts the problem thus into the mouth of Henry V :

“ For you shall read that my great grandfather
Never went with his forces into France,
But that the Scot on his unfurnished kingdom
Came pouring like a tide into a breach,
With ample and brim fulness of his force,
Galling the gleanèd land with hot essays,
Girding with grievous siege castles and towns,
Till England, being empty of defence,
Hath shook and trembled at the ill neighbourhood.”

This, so majestically expressed, was literally true. But the union of England and Scotland was accomplished, and it has been gloriously maintained.

The cardinal secret was found of not interfering with the local laws or the religion of the smaller nation. Thus left free in these great areas of human interest, a self-developing Scotland preserved the independence which was so precious to her, but linked it with a healthy and sensible brotherhood which has been so effectively the denial of isolation that she is now blamed for having taken over the whole concern !

Take the laws : one of English make, the other

of Roman make. The scholarly Scot led his nation to the latter: the proud Englishman kept his own old customs; and now it is—shall I humbly say it?—the good fortune of Britain to have these different systems of jurisprudence administered in the House of Lords, and of the Empire to have its appeals determined by the Judicial Committee of the Privy Council, by a Tribunal of five persons in which it not infrequently happens that one member is an Englishman or an Irishman and the other four are all Scotchmen. Scottish independence does not seem to have suffered much in that transaction, but Scottish isolation is nowhere to be found. The Scot tries to make the best of the position and he tries to give his best to it.

Canada is coming along, her day appears to me to be quickly arriving. In the Judicial Committee I have sat opposite good and distinguished Canadian lawyers like Sir Charles Fitzpatrick, and now we hardly think our Session complete without having had the advantage of good comrades in the higher department of the law, like Mr. Justice Duff. I surprised my friend the other day, and he was in strange company. He was sitting on an Indian case in the Judicial Committee. The Board consisted of himself; Lord Phillimore, an English judge; Sir John Edge, an Englishman formerly Chief Justice of Allahabad; Mr. Ameer Ali, of the Calcutta High Court, a Mohammedan jurist; and, as President, Lord Dunedin, a great House of Lords Judge, a

former Lord President of the Court of Session, and of course a Scotchman. They all looked as dignified as, and a good deal more comfortable than, if they had been seated in howdahs on the backs of elephants by the sacred waters of the Ganges.

Canada, how fortunate she has been ! Such good fortune the world has never known. Her southern frontier, over 3,000 miles long, guarded for over a century by the good sense and friendship which were embodied in the Rush-Bagot Agreement. Other nations have had to defend their independence at enormous and depressing cost, with all the panoply of war. The Canadian lakes are guarded by four of the greatest war-ships that the world has ever known : four vessels of 100 tons each, but each with a remarkable gun whose projectile weighs 18 lb. ! To military and naval men these would be the ornaments of a doll's house : but to lovers of civilization and peaceful ways among the kingdoms of the earth, they are the consecrated symbols of good sense and good neighbourhood. They foreshadow the death of force and the life of reason in the government of human affairs.

Then, in her constitution also, as well as her situation, how grateful a country this wonderful Canada should be ! She won it, and it has been made a model in Australia and South Africa, and even in Ireland ; and in each of these cases, even the last, notwithstanding the acerbities of centuries of conflict, they strike that deep resonant

chord of justice to which every land within the Empire responds, and all of these lands look upon the Judicial Committee of the Privy Council as a providentially handy keyboard upon which to sound it. With them the old notions of force and forcible restraints and forcible distortions, and still more force—all that disappears. It is justice all these nations are after that come to the British Throne and ask how an impartial tribunal views their problems.

At any moment if any of these nations construed independence as isolation, then, of course, isolation they could have, and isolation would bring in its train not a few difficulties on a stupendous scale. Any of these nations, of course, could say to itself: "We want a better article than the Empire supplies. We trust our own experience and our own knowledge of law and our own skill, rather than that which has been the companion of Empire until it has reached a greatness unparalleled in the world. We prefer our own judicial wisdom." Or it may say: "Sever the legal link of Empire! Forfeit our Imperial possessions! Relinquish our co-operation in law of ideals and ideas which are rendering unrivalled service to mankind! Break our partnership and throw away our birthright!" And so on the argument would go, winding up with a "never, never, never." And the vows would be renewed to march forward into the unknown shoulder to shoulder, high-hearted comrades, comrades for ever. And fine rever-

berations there would be. You may think, however, that it required some imaginative effort to think that things would ever get so far. If they did, one could also imagine an outside world,—jealous, envious, ready to pounce,—murmuring with a smile, “Mischief’s afoot.”

In recent years, more and more, Canada has been realizing her participation in this Imperial scheme.

Nowadays the range of law administered in the Council does truly embrace every climate, almost every race, religion and creed under the sun. Great principles—fundamental, inter-penetrating, uplifting, workable, wholesome and enduring—are expounded, defended and applied; and the greatest varieties of adaptation and practice are recognized and respected in the appeal of this great brotherhood of nations within the Empire.

In the recent sittings the appeals from Canada almost equalled in number those from India, with a population of 320 million souls; and, on the whole, the vigour of the Tribunal, reinforced as it is by great men from India, Australasia, Africa and Canada, does not appear to abate. Far be it from me, in my position, to make any reference of a laudatory character to the work of that Tribunal. No, the reference is of a different kind. Day by day the question of the “Old Book” propounds itself to the mind—“Who is sufficient for these things?” Testimonies reach us from all ends of the earth, of respect amounting

to veritable homage ; but that only deepens our sense of the magnitude of responsibility, of the need for guidance, of the consecration to Empire of the task on which we are engaged.

You see, Gentlemen of the Bar of Canada, that I have come thus far, not alone because of your gratefully appreciated invitation, but because I am a believer in a British Empire which, linked together by law, dedicates the majesty of Justice to the service of mankind.

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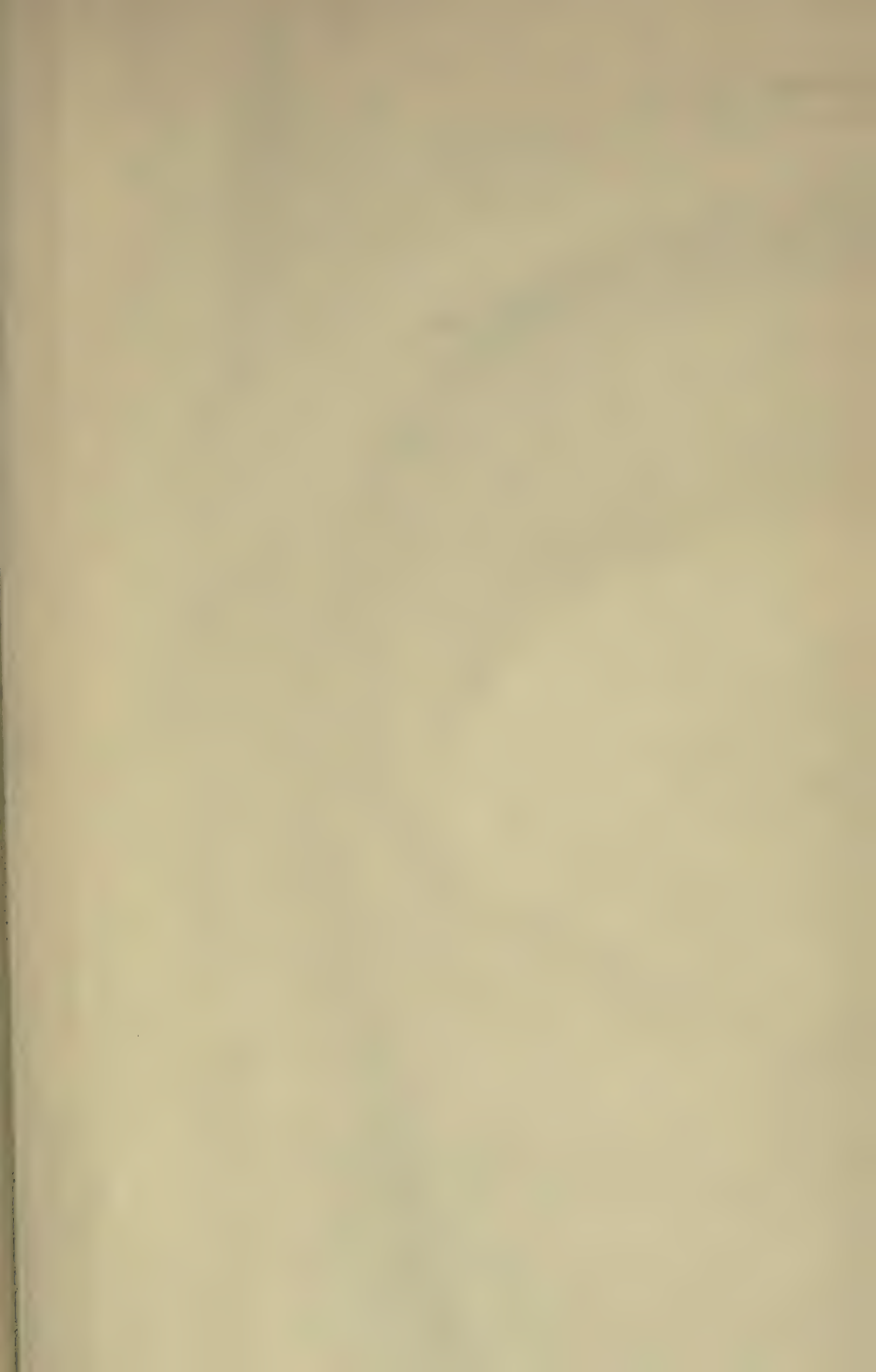
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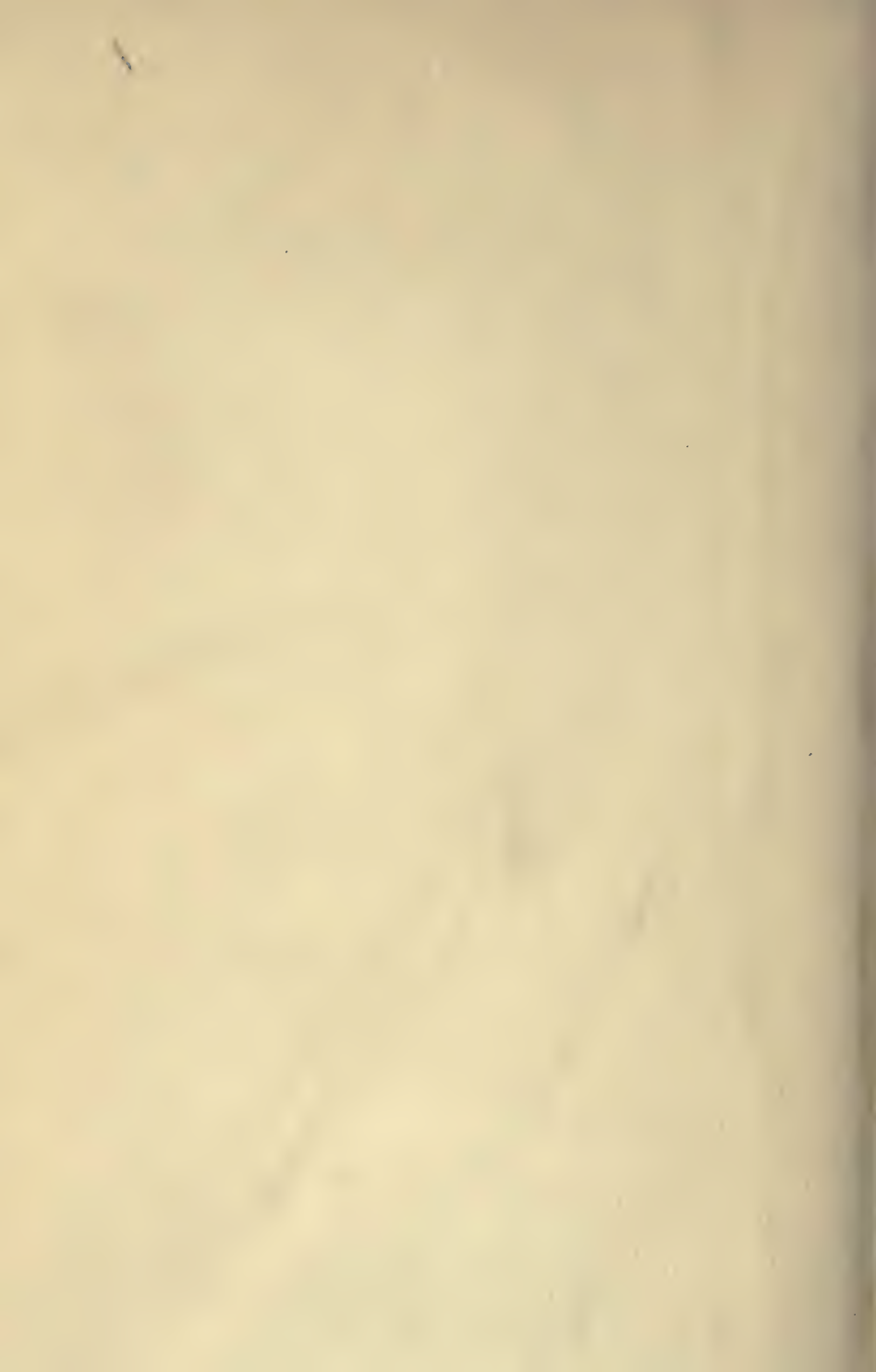
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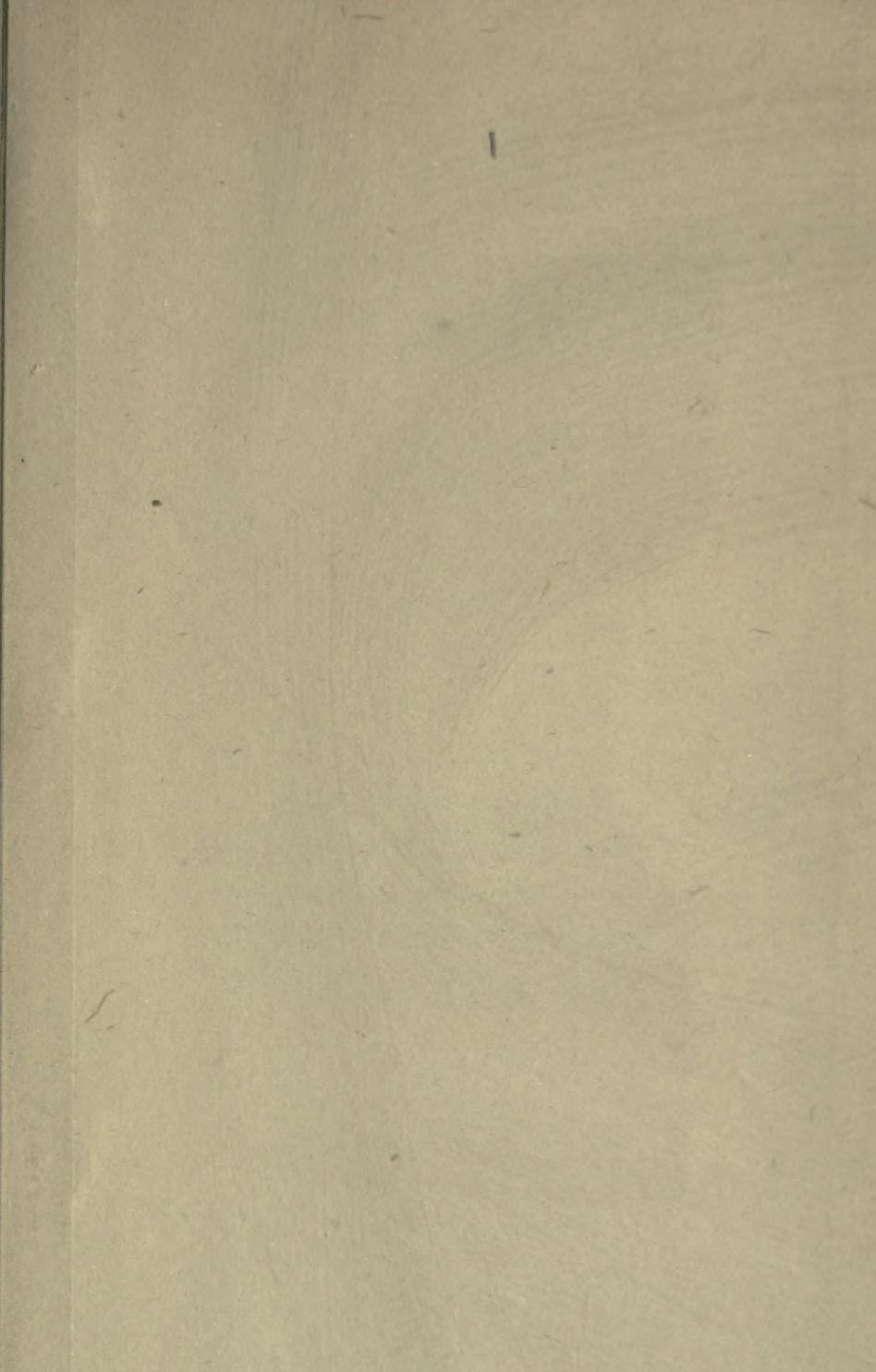
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